In the

United States Court of Appeals

For the Seventh Circuit

No. 21-1852

NOREEN LANAHAN,

Plaintiff-Appellant,

v.

COUNTY OF COOK,

Defendant-Appellee.

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division.
No. 17-cv-5829 — **Harry D. Leinenweber**, *Judge*.

ARGUED FEBRUARY 17, 2022 — DECIDED JULY 20, 2022

Before ROVNER, HAMILTON, and ST. EVE, *Circuit Judges*.

ST. EVE, *Circuit Judge*. Relator Noreen Lanahan was a long-time employee of Cook County's Department of Public Health responsible for managing federal grants. After her retirement, Relator filed a *qui tam* suit against Cook County, alleging various violations of the False Claims Act arising out of the use of federal grants. The district court dismissed Relator's Second Amended Complaint with prejudice, and Relator now appeals. We affirm.

I. Background

Appellant Noreen Lanahan ("Relator") worked as a director of financial control in Cook County's Department of Public Health ("CCDPH"), a certified public health department, from 1994 until her retirement in 2017. In this capacity, Relator oversaw Cook County's claim and reimbursement policies for hundreds of federal grants and crafted budgets submitted to the federal government in order to qualify for grant funding. During this period, Cook County received approximately $20 million annually from the federal government for services related to federal public health priorities. Between 2008 and 2017, Relator repeatedly warned Cook County it was seeking federal reimbursement for unincurred expenses. Relator identifies four examples of Cook County's purportedly fraudulent practices.

A. 2009–11 H1N1 Influenza Grant

In September 2009, the Centers for Disease Control and Prevention ("CDC") awarded Cook County $2.5 million in federal grant funds to distribute the H1N1 vaccine. Prior to performing under the grant, Cook County prepared an anticipated budget. By regulation, Cook County could only be reimbursed for costs associated with work actually performed under the grant. Instead, Relator asserts Cook County estimated the time dedicated to federal service after the fact and pinned the salary allocations submitted for reimbursement to the CDC to pre-performance budget estimates. Relator herself "never tracked [ ] federal service dedication," never asked other managers how they apportioned employee time and was never solicited for an estimate of how individual employees apportioned their time among federal and local service.

Indeed, Relator never tracked her own dedication to federal service.

On September 1, 2011, Cook County submitted two Certified Grant Allocation Cost Reports, one associated with the IDPH Pandemic Flu program and one with the IDPH Mass Vaccination program. Although the line-item shared expenses for each individual employee are identical, the IDPH Pandemic Flu expense report requested $1,065,506.05 in federal reimbursement while the IDPH Mass Vaccination expense report requested $1,210,802.33 in federal reimbursement. On September 26, 2011, the CDC transmitted reimbursement vouchers to the Cook County Comptroller.

Cook County was also required by regulation to segregate federal reimbursement funds from unaffiliated Cook County revenue. Upon receiving federal funds, Cook County submitted credit vouchers to apply the reimbursements to accounts in the CCDPH's general ledger. On November 30, 2011, the Cook County Comptroller moved the H1N1 funds into a discretionary account for the benefit of Cook County Health and Hospital Systems ("CCHHS"). Relator asserts this transfer "frustrated the allocations" in the September 1, 2011, report and "undermined any truth to the budget and compliance certifications" represented to qualify for and close out the grants.

B. 2012–14 WIC Grant

The Supplemental Nutrition Assistance Program ("SNAP") for Women, Infants and Children ("WIC") provides supplemental nutrition, education, and healthcare to low-income citizens. Individual WIC grant business units occasionally retain positive balances at the end of the fiscal year

as a product of deferred personnel costs. By July 2014, Cook County had accumulated approximately $6.8 million in deferred WIC credits. In an email to Cook County's Director of Grants Management, Relator explained the $6.8 million "provides funding for Salaries and Fringe Benefits of grant employees should current grants not be renewed" and the "deferred revenue rolls forward from the previous grant year and is adjusted at grant closing." To avoid "distort[ing] current period grant expenses," Relator opined the "funds need[ed] to be segregated by the use of a unique Cost Center." Instead, Cook County opted to move the $6.8 million in deferred revenue into the general health fund of the CCHHS as, according to Cook County's Chief Budget Officer, "[p]resumably these are expenses that were absorbed by the general/health fund when they occurred." Relator asserts CCHHS did not itself incur any expense in connection with the WIC grants.

C. Alleged Hektoen Kickback Scheme

The Hektoen Institute of Medicine ("Hektoen") is a nonprofit fiscal agent that processes claims and collects reimbursement revenue on behalf of Cook County for personal service costs incurred by Cook County physicians for federal grants. Hektoen did not have a formal agreement with Cook County but instead unofficially contracted with Cook County physicians in an "Exhibit A" package. Hektoen retained the only executed copies of these agreements, which Relator alleges violated recordkeeping regulations. Hektoen submits claims upon and collects revenue from federal research grants on behalf of Cook County physicians in exchange for 10–15% of the awarded grant amount. Hektoen reallocated this collected revenue into a "Dean's Fund" and gave physicians "near autonomy" over the money.

In 2015, Hektoen collected and retained $5 million in restricted federal funds. Relator points to a 2018 Chicago Tribune article detailing allegations against Dr. Bala Hota, a former Cook County hospital physician, as an example of the problems with Hektoen's practices. Dr. Hota allegedly embezzled almost $280,000 from Hektoen's salary reallocation account, which he spent on personal expenses such as iTunes, luxury travel, and couture cupcakes.

D. 2009–12 PHIMC Grant Management

The Public Health Institute of Metropolitan Chicago ("PHIMC") is a nonprofit fiscal agent. PHIMC is not a certified health department. In 2010, the CDC awarded CCDPH $15.9 million as an up-front payment for services to be rendered during a two-year period of performance. In the funding notice, the CDC limited funding to certified public health departments. The CCHHS Board approved PHIMC to serve as the fiscal agent for these funds. In June 2011, the CCHHS Board passed a resolution authorizing the transfer of grant funds to PHIMC, even though Relator alleges it had transferred the funds previously. PHIMC lacked the resources and financial controls to qualify for the award independently and the CCDPH would have to account for the funds in an annual audit.

E. Procedural History

Relator filed an initial *qui tam* complaint alleging various violations of the False Claims Act ("FCA"), 31 U.S.C. § 3729 *et seq*. After investigating Relator's allegations, the United States declined to intervene. Cook County moved to dismiss Relator's complaint for failure to state a claim under Rule 12(b)(6) and Rule 9(b). Instead of responding, Relator filed a First

Amended Complaint which differed very little from the initial complaint. Cook County moved to dismiss the First Amended Complaint under Rule 12(b)(6) and Rule 9(b) as well.

The district court dismissed Relator's First Amended Complaint without prejudice in a thorough and detailed opinion. The chief deficiencies of Relator's FCA claims were twofold. First, Relator failed to plead the submission of a false statement to the government, and certainly not with the particularity required under Rule 9(b). Indeed, most of the activities Relator described occurred after federal payments had been disbursed to Cook County. Second, Relator failed to allege any false claim for payment submitted by Cook County to the government. The district court observed accounting failures, procedural irregularities, and regulatory violations could not themselves give rise to an FCA claim.

In response, Relator filed the operative Second Amended Complaint, alleging four causes of action under the FCA: a claim for presenting false claims for payment, in violation of 31 U.S.C. § 3729(a)(1)(A) (Count I); a claim for use of false statements, in violation of 31 U.S.C. § 3729(a)(1)(B) (Count II); a claim for conversion, in violation of 31 U.S.C. § 3729(a)(1)(D) (Count III); and a claim for reverse false claims, in violation of 31 U.S.C. § 3729(a)(1)(G) (Count IV). Again, Cook County moved to dismiss the Second Amended Complaint based on Rule 12(b)(6) and Rule 9(b).

The district court dismissed the Second Amended Complaint with prejudice against Relator.[1] The district court noted

[1] Initially, the district court dismissed the Second Amended Complaint with prejudice without specifying whether it pertained only to Relator or

that, despite painstakingly explaining the Rule 9(b) pleading standard in its previous opinion, Relator failed to cure the deficiencies that warranted dismissal of the First Amended Complaint. The defects that doomed the Second Amended Complaint mirror those that doomed the First Amended Complaint. Specifically, with respect to Count I and Count II, Relator failed to adequately plead any false statements or claims, let alone any false statements connected with any government payments. While Relator's allegations surrounding the administration of the H1N1 grant reimbursement were more detailed, they nonetheless did not identify any specific falsities in the reports Cook County submitted. Even had Relator adequately pled a false statement, she did not link it to a government payment. The district court deemed Relator's improper retention claims in Count III and Count IV inadequate because the Second Amended Complaint did not contain sufficient facts indicating Cook County had retained any funds that properly belonged to the government. Because Relator enjoyed two opportunities to amend her complaint, one with the benefit of the district court's detailed assessment of the claims' flaws, the district court dismissed the Second Amended Complaint with prejudice. The district court observed the Second Amended Complaint contained "the same mistakes" as Relator's previous iteration, and these deficiencies were "not small and provide th[e] Court with no indication that Relator may be able to adequately plead an FCA claim in the future." Relator now appeals the district court's

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to the United States as well. The district court granted the government's resultant motion to clarify the dismissal and specified the action was dismissed with prejudice as to Relator but without prejudice as to the United States.

order dismissing the Second Amended Complaint with prejudice.

II. Discussion

Relator presents two arguments on appeal.[2] First, that the district court improperly dismissed her suit for failure to state a claim. Second, that the district court improperly did so with prejudice. Both arguments fail.

The FCA imposes civil liability on a series of actions related to fraudulent treatment of government funds. 31 U.S.C. § 3729(a)(1). The Attorney General may bring suit under the FCA directly in the name of the United States. *Id*. at § 3730(a). Alternatively, a private citizen referred to as a "relator" may bring a *qui tam* action "in the name of the Government." *Id*. at § 3730(b)(1). If the *qui tam* action results in damages, the relator shares in the award. *See id*. at § 3730(d).

We review a district court's dismissal of a complaint de novo, construing "all allegations and any reasonable inferences in the light most favorable to the plaintiff." *Jauquet v. Green Bay Area Catholic Educ., Inc.*, 996 F.3d 802, 807 (7th Cir. 2021) (internal quotations omitted). Rule 12(b)(6) requires a complaint contain sufficient facts "to state a claim to relief that

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[2] Although the district court did not enter a separate final judgment in this case per Federal Rule of Civil Procedure 58, we are nonetheless confident in our appellate jurisdiction. The district court clearly "indicated its intent to finally dispose of all claims," *Law Offices of David Freydin, P.C. v. Chamara*, 24 F.4th 1122, 1128 (7th Cir. 2022), in dismissing the Second Amended Complaint with prejudice, expressly noting the "deficiencies in the [Second Amended Complaint] … provide this Court with no indication that Relator may be able to adequately plead an FCA claim in the future." The district court's judgment is therefore final within the meaning of 28 U.S.C. § 1291. *See id*.

is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

Claims arising under the FCA, an antifraud statute, are subject to Rule 9(b)'s heightened pleading standard. *United States ex rel. Mamalakis v. Anesthetix Mgmt. LLC*, 20 F.4th 295, 301 (7th Cir. 2021). To state such a claim, Relator "must state with particularity the circumstances constituting fraud or mistake." Fed. R. Civ. P. 9(b). To satisfy Rule 9(b)'s strictures, Relator must plead "the first paragraph of any newspaper story," i.e., the "who, what, when, where, and how of the fraud." *United States ex rel. Berkowitz v. Automation Aids, Inc.*, 896 F.3d 834, 839 (7th Cir. 2018) (internal quotations omitted). None of Relator's causes of action meet this rigorous pleading standard.

A. Counts I–II: False Claims and False Statements

Relator's first two causes of action both involve allegations of false submissions to the government. Section 3729(a)(1)(A) imposes civil liability where a person "knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval" to the government. 31 U.S.C. § 3729(a)(1)(A). To maintain a cause of action under § 3729(a)(1)(A), Relator must plead with particularity (1) the existence of a false or fraudulent claim that (2) Cook County presented to the government for payment (3) with knowledge the claim was false. *United States v. Sanford-Brown, Ltd.*, 788 F.3d 696, 709 (7th Cir. 2015), *reinstated in part, superseded in part on other grounds by United States v. Sanford-Brown, Ltd.*, 840 F.3d 445 (7th Cir. 2016). Section 3729(a)(1)(B) prohibits "knowingly mak[ing], us[ing], or caus[ing] to be made or used, a false record or statement material to a false or fraudulent claim." To survive a motion to dismiss under this section,

Relator must plead Cook County (1) made a statement in order to receive money from the government, (2) the statement was false, (3) Cook County knew the statement was false at the time it made the statement, and (4) the statement was material to the government's decision to give Cook County money. *Berkowitz*, 896 F.3d at 840.

Relator's claims under § 3729(a)(1)(A) and § 3729(a)(1)(B) falter at the first element. Relator has not alleged any false claim or statement for payment with the degree of granularity Rule 9(b) requires. Rule 9(b) demands Relator "allege … specific facts demonstrating what occurred at the individualized transactional level" to maintain a claim. *Id*. at 841. This "includes 'the identity of the person making the misrepresentation, the time, place, and content of the misrepresentation, and the method by which the misrepresentation was communicated to the [defendant].'" *United States ex rel. Hanna v. City of Chi.*, 834 F.3d 775, 779 (7th Cir. 2016) (quoting *United States ex rel. Grenadyor v. Ukrainian Vill. Pharmacy, Inc.*, 772 F.3d 1102, 1106 (7th Cir. 2014)).

We dismiss outright Relator's conclusory assertions that Cook County profited from "reimbursement of WIC false claims" and that Hektoen was reimbursed "[d]espite the falsity of the underlying claims." We are not obligated to accept "sheer speculation, bald assertions, and unsupported conclusory statements" on a motion to dismiss. *Taha v. Int'l Bhd. of Teamsters, Local 781*, 947 F.3d 464, 469 (7th Cir. 2020). With respect to Relator's allegations regarding the WIC grant funds, Hektoen, and PHIMC's treatment of federal grant money, she does not identify any statement or claim, false or otherwise, Cook County made to the government. For each of these sources of federal grant money, Relator objects only to Cook

County's treatment of the funds after they were disbursed. The Second Amended Complaint is utterly silent as to the events leading up to Cook County's receipt of these funds. Relator's assertions of regulatory or contractual violations are similarly incapable of establishing an FCA claim absent some connection between the breaches and a false statement or claim for payment, which Relator has not pleaded. *See Berkowitz*, 896 F.3d at 839; *Hanna*, 834 F.3d at 779.

Relator's assertions about the expense reports Cook County submitted to the CDC for reimbursement under the H1N1 vaccination grant provide some additional details, but these, too, fail. Relator asserts generally that the expense reports are false because the allocations were estimated after the fact instead of recorded contemporaneously. Relator, however, does not support this claim with particularized information about how the allocations were calculated or the expense reports prepared. Indeed, Relator states she "never discussed … how individual employees apportioned their time among various federal and local services."

Nor does Relator assert any particular line item in the expense reports is false. Tellingly, while Relator pleads she "never tracked her own dedication to federal services," Relator does not claim her allocation is false. Relator's presentation of the differing claimed total reimbursements between the two expense reports despite "indistinguishable" individual line items is superficially tempting but does not bear up under closer scrutiny. Both the IDPH Pandemic Flu and the IDPH Mass Vaccination expense reports calculate a total shared expense of $1,862,772.82, a product of each recorded employee's salary and the amount of time they dedicated to federal service. The ultimate claimed reimbursement,

however, is the sum of the government share amount and the fringe benefits amount. The government share amount is calculated by taking a specified percentage of the total shared expenses. For the IDPH Mass Vaccination expense report, this percentage is 50%, yielding a government share amount of $931,386.41. The fringe benefits amount is calculated by taking a specified percentage of the government share amount. For both the IDPH Mass Vaccination expense report and the IDPH Pandemic Flu expense report, the fringe benefits rate is 30%. For the IDPH Mass Vaccination expense report, the fringe benefits amount comes to $279,415.92. In total, the ultimate reimbursement claimed under the IDPH Mass Vaccination expense report—the sum of the $931,386.41 government share amount and the $279,415.92 fringe benefits amount—is $1,210,802.33.

The government share amount and the fringe benefits amount in the IDPH Pandemic Flu expense report differ from their counterparts in the IDPH Mass Vaccination expense report. The IDPH Pandemic Flu expense report does not indicate the government share rate, and this appears to be the source of the discrepancy. The total government share amount reported in the IDPH Pandemic Flu expense report is $819,620.04, which amounts to 44% of the total calculated shared expenses of $1,862,772.82. The fringe benefits rate for the IDPH Pandemic Flu expense report, like that of the IDPH Mass Vaccination expense report, is 30%. When applied to the reported government share amount this yields a fringe benefits amount of $245,886.01. All told, Cook County claimed $1,065,506.05 in reimbursements from the government under the IDPH Pandemic Flu expense report. Based on the actual submissions, it appears the differential in claimed reimbursements between the two expense reports is a product of the

structure of the grants themselves, not to the value of federal services claimed as Relator suggests. And yet, Relator does not allege the government share rates applied in either the IDPH Pandemic Flu expense report or the IDPH Mass Vaccination expense report are false.

Even if Relator had adequately pleaded the falsity of the expense reports, she did not sufficiently link them to any government payments. Relator pleads Cook County submitted the two expense reports to the CDC on September 1, 2011. Next, Relator alleges the CDC transmitted reimbursement vouchers to Cook County on September 26, 2011. Relator asks us to infer the former caused the latter but offers no specific factual pleadings to support this logical leap. The Second Amended Complaint is entirely silent as to the purpose of the expense report, how the CDC uses such reports, or whether they are a prerequisite to government reimbursement. Relator's claim fails.

Further, while Relator alleges Cook County improperly reallocated restricted H1N1 grant funds to an unrestricted CCDPH account thereby "undermin[ing] the truth to the budget and compliance certifications represented by program managers to qualify and closeout the grants," she does not allege the certifications were false at the time they were made, as the FCA requires. *See Grenadyor*, 772 F.3d at 1105–06. Instead, Relator relies upon conduct which, according to the Second Amended Complaint, took place on November 30, 2011—well after the September 1, 2011, certification—to infer the certification itself was false at inception. Finally, although intent may be alleged generally in an FCA claim, Relator neglects to plead any facts from which we may infer Cook County intended to defraud the government. *See United States*

ex rel. Presser v. Acacia Mental Health Clinic, LLC, 836 F.3d 770, 781 n.29 (7th Cir. 2016).

The district court properly dismissed Relator's claims under §§ 3729(a)(1)(A)–(B) of the FCA.

B. Counts III–IV: Improper Retention of Government Funds

In Count III and Count IV, Relator suggests Cook County improperly retained government funds. Section 3729(a)(1)(D) prohibits conversion of government funds and assigns civil liability where someone "has possession, custody, or control of property or money used, or to be used, by the Government and knowingly delivers, or causes to be delivered, less than all of that money or property." 31 U.S.C. § 3729(a)(1)(D). Similarly, a reverse false claim under § 3729(a)(1)(G) proscribes "knowingly mak[ing], us[ing], or caus[ing] to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly conceal[ing] or knowingly and improperly avoid[ing] or decreas[ing] an obligation to pay or transmit money or property to the Government." *Id*. at § 3729(a)(1)(G). Claims under both § 3729(a)(1)(D) and § 3729(a)(1)(G) require Relator to plead Cook County possessed funds that rightfully belonged to the government.[3] *See United States ex rel. Yannacopoulos v. Gen. Dynamics*, 652 F.3d 818, 835 (7th Cir. 2011); *see also United States ex rel. Foreman v. AECOM*, 19 F.4th 85, 122 (2d Cir. 2021) (analyzing § 3729(a)(1)(D)). Relator failed to do so in the Second Amended Complaint.

[3] Section 3729(a)(1)(G) also requires Relator to adequately plead a false statement. *See Yannacopoulos*, 652 F.3d at 835–36. For all the reasons articulated in Section II.A, Relator's reverse false claims cause of action fails on this basis as well.

At most, Relator pleads Cook County placed federal funds from the H1N1 grant and the WIC grant in improper accounts. Relator does not plead the funds were due back to the government. Relator alleges Cook County transferred H1N1 grant funds into a CCHHS discretionary account, in violation of regulations which mandated segregation of restricted government funds. Nowhere does Relator claim Cook County was not entitled to the H1N1 funds.

Similarly, Relator objects only to Cook County's decision to place the $6.8 million of deferred restricted federal WIC funds into the CCHHS Enterprise Fund. In the email exchange attached to, and cited liberally throughout, the Second Amended Complaint, Relator emphasizes the $6.8 million in deferred WIC funds are intended to "provide[] funding for Salaries and Fringe Benefits of grant employees should current grants not be renewed" and "roll[] forward from the previous grant year and [are] adjusted at grant closing." This characterization strongly suggests Cook County was permitted to retain those WIC funds even after the federal grant expired. Relator's recommendation to place the $6.8 million in WIC funds in a segregated "unique Cost Center" reinforces this conclusion. If Cook County was not entitled to the $6.8 million in deferred federal revenue, it would certainly be odd to recommend Cook County keep the money. Cook County ultimately rejected Relator's suggestion and, instead, placed the WIC funds into a CCHHS account. Relator claims this was an error, not because Cook County decided to keep the funds instead of remitting them back to the government, but because the WIC funds were deposited into the account of an agency that did not incur costs related to the grant. At root, Relator objects to the location of the WIC funds, not Cook County's custody of the WIC funds. Moreover, the Second

Amended Complaint is entirely bare of allegations regarding when, how, and under what circumstances Cook County had an obligation to return these funds to the government. Once again, Relator's allegations amount to nothing more than a putative regulatory violation.

Finally, Relator fails to plead any facts suggesting Cook County knew it was in possession of government funds to which it was not entitled. *Grenadyor*, 772 F.3d at 1105–06. With respect to the reclassified H1N1 funds, the Second Amended Complaint is wholly silent as to Cook County's knowledge or lack thereof. As to the WIC funds, while Relator alleges the assignment to the CCHHS account amounted to a "windfall" and that she disagreed with this decision, there is no indication whatsoever Cook County knew it was not entitled to those funds. *See* 31 U.S.C. § 3729(a)(1)(G) (requiring knowledge); *see also, e.g.*, *United States ex rel. Harper v. Muskingum Watershed Conservancy Dist.*, 842 F.3d 430, 438–39 (6th Cir. 2016) (interpreting § 3729(a)(1)(D) to require knowledge that the property belongs to the government); *Foreman*, 19 F.4th at 122 (same). Indeed, Cook County's Chief Budget Officer justified placing the funds in the CCHHS account because, "[p]resumably these are expenses that were absorbed by the general/health fund when they occurred." This suggests Cook County was under the impression that the WIC deferred revenue mirrored already-incurred expenditures.

The district court properly dismissed Relator's causes of action for conversion under § 3729(a)(1)(D) and for reverse false claims under § 3729(a)(1)(G).

C. Dismissal with Prejudice

Relator nominally presents the district court's decision to dismiss the Second Amended Complaint with prejudice and without leave to amend as a basis for appeal. Beyond listing the issue as a question presented, however, Relator entirely fails to expound on the position. Indeed, even when Cook County suggested Relator forfeited this argument such that plain error applied, Relator did not respond to Cook County's position or even contest forfeiture on reply. Relator's challenge to the dismissal with prejudice is waived as perfunctory, underdeveloped, and cursory. *Shipley v. Chi. Bd. of Election Comm'rs*, 947 F.3d 1056, 1063 (7th Cir. 2020). Furthermore, Relator failed to adequately present her claims even after the district court dismissed her First Amended Complaint with a detailed discussion of its deficiencies. The dismissal with prejudice was proper.

III. Conclusion

For the foregoing reasons, the judgment of the district court is AFFIRMED.