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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Robert Walker; Fernando Moreno; and Juan David Camarena; and United States ex. rel. Robert Walker, Fernando Moreno and Juan David Camarena,

Plaintiffs/Relators,

v.

Community Education Centers, Inc., a Delaware Corporation,

Defendant.

No. CV-12-02582-PHX-JAT
ORDER

Pending before the Court are: (1) Plaintiffs/Relators’ Motion to Appoint Counsel (Doc. 8); (2) Plaintiffs/Relators’ Motion for Extension of Time to Extend Time for Service of Process (Doc. 9); (3) Defendant’s Motion to Unseal Case (Doc. 10); and (4) Defendant’s Motion for Extension of Time to File Answer (Doc. 11).

On December 4, 2012, Robert Walker, Fernando Moreno, and Juan David Camarena (“Plaintiffs/Relators”) moved to file their “qui tam” complaint under seal. (Doc. 1). Plaintiffs/Relators argued that such sealing was appropriate because their lawsuit contained a cause of action alleging violations of the Federal False Claims Act. (*Id.*). Plaintiffs/Relators acknowledged that pursuant to 31 U.S.C. § 3730(b)(2) such actions must remain under seal for at least 60 days and shall not be served on the defendant unless the court so orders. (*Id.*).

After the Court granted the Motion to Seal, Plaintiffs/Relators’ Complaint was

1 filed under seal. Plaintiffs/Relators' Complaint contains five counts. In Counts One,
2 Two, Three, and Four, it appears that Plaintiffs/Relators assert various claims of
3 employment discrimination, hostile work environment, and retaliation under Title VII of
4 the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e. Count Five of the
5 Complaint purports to be a claim under the Federal False Claims Act, 31 U.S.C. §§ 3729-
6 3733. (Doc. 7 at 7). In Count Five, Plaintiffs/Relators allege that they "were aware of
7 fraud committed against the government in covering up the circumstances surrounding
8 the death of the inmate at a CEC facility." (*Id.*).

9 Thereafter, Plaintiffs/Relators moved for an extension of time to serve Defendant.
10 On July 24, 2013, Defendant appeared in this case and moved to unseal the Record. In its
11 Motion to Unseal, Defendant states that "Plaintiffs/Relators served the Complaint on
12 [Defendant's] statutory agent on or around July 3, 2013." (Doc. 10). There is no
13 evidence in the Record that Plaintiffs/Relators ever served the Government with a copy
14 of the complaint and a written disclosure of Plaintiffs/Relators' supporting material
15 evidence as required by 31 U.S.C. 3730(b). Moreover, there is no evidence the
16 Government was ever given an opportunity to intervene in this case. Finally, the Court
17 never ordered the complaint to be served on Defendant as is required before Defendant is
18 served pursuant to 31 U.S.C. 3730(b)(2).

19 As a result, Plaintiffs/Relators violated the seal provision of 31 U.S.C. §
20 3730(b)(2) by serving Defendant with the Complaint and by giving the Government no
21 opportunity to intervene. The seal provision provides an appropriate balance between
22 encouraging more private false claims litigation and the government's need to fully
23 evaluate a private enforcement suit to determine if the suit involves matter the
24 Government is already investigating and whether it is in the Government's interest to
25 intervene and take over the civil action. *U.S. ex rel. Lujan v. Hughes Aircraft Co.*, 67
26 F.3d 242, 245 (9th Cir. 1995). These two purposes allow "the *qui tam* relator to start the
27 judicial wheels in motion and protect his litigative rights, [and allow] the government the
28 opportunity to study and evaluate the relator's information for possible intervention in the

1 *qui tam* action or in relation to an overlapping criminal investigation.” *Id.* The district
2 court must balance these two purposes in determining an appropriate sanction for
3 violation of the seal. *Id.*

4 In determining whether dismissal is an appropriate sanction, the district court must
5 consider: (1) whether the Government has been harmed by the disclosure; (2) the nature
6 and relative severity of the violation; and (3) the presence or absence of bad faith or
7 willfulness. *Id.* at 245-46.

8 Here, the Government has been irreparably harmed by the disclosure of the
9 complaint to Defendant “by the complete failure to abide by any of the seal provisions,
10 including failure to serve the government with a copy of the complaint.” *Id.* at 245.
11 Moreover, such disclosure “irreversibly frustrates the congressional goals” underlying the
12 sealing provisions. *Id.* Additionally, the nature and relative severity of the violation in
13 this case is extreme. Here, Plaintiffs/Relators failed to comply with any of the
14 requirements of 31 U.S.C. § 3730(b)(2). Finally, in considering whether there was
15 willfulness or bad faith, the Record indicates that Plaintiffs/Relators knew the Defendant
16 could not be served with the Complaint unless the Court so ordered, and
17 Plaintiffs/Relators chose to serve the Complaint in the absence of a Court Order. (*See*
18 Doc. 1 (acknowledging the complaint cannot be served on Defendant unless the Court so
19 orders)).¹

20 As a result, the balance of factors favors dismissal of Plaintiffs/Relators’
21 Complaint to the extent it asserts violations of the False Claims Act because
22 Plaintiffs/Relators violated the seal. As a result, to the extent Plaintiffs/Relators’
23 Complaint asserts violations of the False Claims Act, it is dismissed without prejudice to
24 the Government bringing suit on such claims.

25 Next, to the extent that Plaintiffs/Relators intended to bring claims asserting

26 ¹ The Court also notes that Plaintiffs brought this suit *pro se* and individuals are
27 not entitled to proceed *pro se* in False Claims Act cases. *Stoner v. Santa Clara County*
28 *Office of Education*, 502 F.3d 1116, 1125-28 (9th Cir. 2007).

1 violations of Title VII, the Court is aware of no authority allowing Plaintiffs/Relators to
2 assert Title VII claims in a qui tam False Claims Act action. In a False Claims Act case,
3 the Government is the Plaintiff and the individuals who bring the suit are the relators. In
4 general, in an employment lawsuit, the individuals who are harmed by the adverse
5 employment action are the Plaintiffs. Accordingly, because Plaintiffs/Relators' claims
6 asserting violations of Title VII were improperly brought in a False Claims Act qui tam
7 lawsuit, those claims are also dismissed without prejudice to Plaintiffs/Relators
8 reasserting in an appropriate lawsuit.

9 Based on the foregoing,

10 **IT IS ORDERED** that, to the extent Plaintiffs/Relators' Complaint asserts
11 violations of the False Claims Act, it is dismissed without prejudice to the Government
12 bringing suit on such claims.

13 **IT IS FURTHER ORDERED** that, to the extent Plaintiffs/Relators intended to
14 assert claims under Title VII, those claims are dismissed without prejudice to
15 Plaintiffs/Relators reasserting in an appropriate lawsuit.

16 As a result, this case is dismissed in its entirety without prejudice and the Clerk of
17 the Court shall enter judgment accordingly.

18 **IT IS FURTHER ORDERED** that Plaintiffs/Relators' Motion to Appoint
19 Counsel (Doc. 8) is denied as moot.

20 **IT IS FURTHER ORDERED** that Plaintiffs/Relators' Motion for Extension of
21 Time to Extend Time for Services of Process (Doc. 9) is denied as moot.

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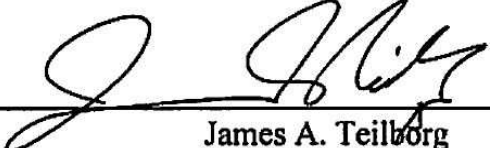
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IT IS FURTHER ORDERED that Defendant's Motion to Unseal Case (Doc. 10) is granted. The Clerk of the Court shall unseal this case and all docket entries in this case.

IT IS FINALLY ORDERED that Defendant's Motion for Extension of Time to File Answer (Doc. 11) is denied as moot.

Dated this 5th day of September, 2013.



James A. Teiborg
Senior United States District Judge