

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA

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5 UNITED STATES OF AMERICA, ex rel.,  
STEVEN FALLON, et al.,

6 Plaintiffs-Relators,

7 v.

8 BELL TRANSIT CORP., et al.,

9 Defendants.

Case No. 16-cv-06994-PJH

**ORDER RE MOTIONS TO DISMISS  
AND MOTION TO STRIKE AND  
ORDER TO SHOW CAUSE RE  
UNSERVED DEFENDANTS**

RE Dkt. Nos. 83, 84, 99

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11  
12 Before the court is a motion to dismiss filed by defendant Hayward Unified School  
13 District ("HUSD"), a motion to dismiss filed by defendant Bell Transit Corp., and a motion  
14 to strike filed by plaintiff-relator Steven Fallon ("plaintiff" or "relator"). Having read the  
15 parties' papers and carefully considered their arguments and the relevant legal authority,  
16 and good cause appearing, the court hereby rules as follows.

17 **BACKGROUND**

18 This is a False Claims Act case. Plaintiff-relator Steven Fallon is a former  
19 employee of Hayward Unified School District ("HUSD"), and in his complaint, he alleges a  
20 five-year scheme by HUSD and others to defraud California and the United States out of  
21 millions of dollars paid to HUSD for providing transportation services to disabled  
22 students.

23 The operative second amended complaint ("SAC") was filed on August 24, 2020,  
24 naming as defendants HUSD, certain of its employees (the "individual defendants"), and  
25 three private entities, Bell Transit Corporation ("Bell Transit"), MCET Affordable  
26 Transportation ("MCET"), and Functional Floors ("Functional Floors"). Dkt. 82. MCET  
27 and Functional Floors have not appeared in the case and appear not to have been  
28 served. That leaves as defendants only HUSD, Bell Transit, and the individual

1 defendants: HUSD employees Matthew Wayne (HUSD associate superintendent during  
2 the relevant time period), Miriam Delgadillo (HUSD office specialist), Luci Rogers (HUSD  
3 chief financial officer during the relevant time period), and Tammy Watson (HUSD  
4 director of special education during the relevant time period). SAC, ¶¶ 20, 22, 25, 27.

5 The false claim allegations fall into three categories: (1) inflating the number of  
6 special needs students in need of individual student transportation (SAC, ¶¶ 48-56), (2)  
7 splitting transportation bids to avoid the \$45,000 threshold for requiring school board  
8 approval and competitive bidding (SAC, ¶¶ 57-72), (3) failing to disclose a conflict of  
9 interest between a HUSD employee and her son, an employee of Bell Transit (SAC,  
10 ¶¶ 73-82).<sup>1</sup>

11 As to category (1), Fallon alleges that a school district typically uses individual  
12 student transportation (also referred to as “taxi transportation”) for approximately 15  
13 students out of every 100,000 students. SAC, ¶ 50. However, when Fallon started  
14 working at HUSD, he observed that a “disproportionate amount” of students were being  
15 transported by taxi. SAC, ¶ 52. Taxi transportation accounted for 42% of HUSD’s  
16 transportation budget for the 2015-16 school year. *Id.* Fallon complained about the  
17 problem, and the next year, the number of taxi-transported students fell from 149 to 13.  
18 SAC, ¶ 53. In the five years preceding Fallon’s complaint, the number of taxi-transported  
19 students had never been below 135. SAC, ¶ 54. Fallon alleges that his complaint  
20 revealed that over 90% of the students receiving individual transportation did not actually  
21 need it. SAC, ¶ 53.

22 As to category (2), Fallon alleges that the special education taxi contracts were  
23 subject to school board approval and competitive bidding requirements if they exceeded  
24 \$45,000. SAC, ¶ 61. Fallon alleges that defendants Watson and Delgadillo falsely  
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26 <sup>1</sup> Fallon also briefly argues that defendants “falsely characterized” the relevant contracts  
27 as independent-contractor contracts, and purports to attach two exhibits in support (see  
28 Dkt. 94 at 6, lines 24-25), but no exhibits were actually attached. Because these  
allegations are not developed, and because Fallon offers no authority for this type of  
mischaracterization rendering a contract void, the court will not address this argument.

1 structured the contracts to avoid those requirements. SAC, ¶ 58.

2 For example, Fallon alleges that, for the 2015-16 school year, defendants Watson  
3 and Delgadillo priced Bell Transit’s initial contract at \$41,700 to avoid the \$45,000  
4 threshold, then incrementally increased the contract 16 times over the course of the  
5 school year, resulting in a final contract amount of over \$2 million. SAC, ¶ 61. Fallon  
6 argues that California public contracting law makes it unlawful to “split” a contract or  
7 “separate [it] into smaller work orders” for purposes of evading competitive bidding  
8 requirements. SAC, ¶ 60 (citing Cal. Pub. Contract Code § 20116). Fallon argues that  
9 the bid-splitting rendered the taxi contracts void, and that any claim for payment on those  
10 void contracts was false/fraudulent.

11 Fallon also provides an example of a transportation contract for Bell Transit that  
12 was submitted to the school board on October 26, 2016, by defendant Wayne, without  
13 having been subjected to the required competitive bidding process. SAC, ¶¶ 65-72.

14 As to category (3), Fallon alleges that Bell Transit hired Emmanuel Delgadillo<sup>2</sup>, the  
15 son of HUSD employee Miriam Delgadillo, because Bell Transit knew that Miriam  
16 Delgadillo “could control the award and amount of taxi service contracted for by HUSD.”  
17 SAC, ¶ 78. Fallon alleges that Bell Transit’s failure to disclose this conflict of interest was  
18 a material omission from each transportation contract. SAC, ¶ 81. Fallon also alleges  
19 that, through Emmanuel, Bell Transit knew that HUSD was inflating the number of  
20 students for whom taxi transportation was needed. SAC, ¶ 82.

21 Separate from the three categories of alleged false claims, Fallon also asserts a  
22 cause of action for employment retaliation. Specifically, Fallon alleges that, as a result of  
23 reporting the alleged false claims, he was subjected to “severe harassment” including  
24 “multiple threats of termination of employment,” and that his job was ultimately eliminated  
25 due to a pretextual “budget shortfall.” SAC, ¶ 93.

26

27 \_\_\_\_\_  
28 <sup>2</sup> Fallon also alleges that Emmanuel Delgadillo was an employee of MCET before being  
hired by Bell Transit, but because MCET has not appeared in this case, any allegations  
regarding MCET are not relevant to these motions.

- 1 Based on the above allegations, Fallon asserts seven causes of action:
- 2 (1) Presentation of false claims in violation of the federal False Claims Act, 31 U.S.C.  
3 § 3729(a)(1)(A), against all defendants,
- 4 (2) Making materially false records or statements in violation of the federal False  
5 Claims Act, 31 U.S.C. § 3729(a)(1)(B), against all defendants,
- 6 (3) Knowingly concealing or avoiding an obligation to pay (i.e., “reverse false claims”) in violation of the federal False Claims Act, 31 U.S.C. § 3729(a)(1)(G), against all  
7 defendants,
- 8 (4) Presentation of false claims in violation of the California False Claims Act, Cal.  
9 Gov’t Code § 12651(a)(1), against all defendants,
- 10 (5) Making materially false records or statements in violation of the California False  
11 Claims Act, Cal. Gov’t Code § 12651(a)(2), against all defendants,
- 12 (6) Knowingly concealing or avoiding an obligation to pay (i.e., “reverse false claims”) in violation of the California False Claims Act, Cal. Gov’t Code § 12651(a)(7),  
13 against all defendants,
- 14 (7) Retaliation in violation of 31 U.S.C. § 3730(h) and Cal. Labor Code § 1102.5,  
15 against defendants HUSD, Wayne, Delgadillo, Rogers, and Watson.

16 HUSD and Bell Transit have both filed motions to dismiss the SAC in its entirety,  
17 without leave to amend. Fallon has filed a motion to strike certain arguments made in  
18 Bell Transit’s reply, arguing they constitute “new argument.”

## 19 DISCUSSION

### 20 A. Legal standard

#### 21 1. Motion to dismiss

22 A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) tests for the  
23 legal sufficiency of the claims alleged in the complaint. Ileto v. Glock, 349 F.3d 1191,  
24 1199–1200 (9th Cir. 2003). Under Federal Rule of Civil Procedure 8, which requires that  
25 a complaint include a “short and plain statement of the claim showing that the pleader is  
26 entitled to relief,” Fed. R. Civ. P. 8(a)(2), a complaint may be dismissed under Rule  
27 12(b)(6) if the plaintiff fails to state a cognizable legal theory, or has not alleged sufficient  
28 facts to support a cognizable legal theory. Somers v. Apple, Inc., 729 F.3d 953, 959 (9th  
Cir. 2013).

While the court is to accept as true all the factual allegations in the complaint,  
legally conclusory statements, not supported by actual factual allegations, need not be

1 accepted. Ashcroft v. Iqbal, 556 U.S. 662, 678–79 (2009). The complaint must proffer  
2 sufficient facts to state a claim for relief that is plausible on its face. Bell Atl. Corp. v.  
3 Twombly, 550 U.S. 544, 555, 558–59 (2007) (citations and quotations omitted).

4 A claim has facial plausibility when the plaintiff pleads factual content that allows  
5 the court to draw the reasonable inference that the defendant is liable for the misconduct  
6 alleged.” Iqbal, 556 U.S. at 678 (citation omitted). “[W]here the well-pleaded facts do not  
7 permit the court to infer more than the mere possibility of misconduct, the complaint has  
8 alleged—but it has not ‘show[n]’—that the pleader is entitled to relief.” Id. at 679. Where  
9 dismissal is warranted, it is generally without prejudice, unless it is clear the complaint  
10 cannot be saved by any amendment. Sparling v. Daou, 411 F.3d 1006, 1013 (9th Cir.  
11 2005).

12 Because at least some of plaintiff’s claims sound in fraud, the complaint must also  
13 meet the heightened pleading standard of Federal Rule of Civil Procedure 9(b). See  
14 Kearns v. Ford Motor Co., 567 F.3d 1120, 1125 (9th Cir. 2009). Rule 9(b) requires a  
15 party alleging fraud or mistake to state with particularity the circumstances constituting  
16 fraud or mistake. To satisfy this standard, the “complaint must identify the who, what,  
17 when, where, and how of the misconduct charged, as well as what is false or misleading  
18 about the purportedly fraudulent statement, and why it is false.” Salameh v. Tarsadia  
19 Hotel, 726 F.3d 1124, 1133 (9th Cir. 2013) (citation and internal quotation marks  
20 omitted).

21 Review is generally limited to the contents of the complaint, although the court can  
22 also consider a document on which the complaint relies if the document is central to the  
23 claims asserted in the complaint, and no party questions the authenticity of the  
24 document. See Sanders v. Brown, 504 F.3d 903, 910 (9th Cir. 2007). The court may  
25 consider matters that are properly the subject of judicial notice, Knieval v. ESPN, 393  
26 F.3d 1068, 1076 (9th Cir. 2005); Lee v. City of Los Angeles, 250 F.3d 668, 688-89 (9th  
27 Cir. 2001), and may also consider exhibits attached to the complaint, see Hal Roach  
28 Studios, Inc. v. Richard Feiner & Co., Inc., 896 F.2d 1542, 1555 n.19 (9th Cir. 1989), and

1 documents referenced extensively in the complaint and documents that form the basis of  
2 a the plaintiff's claims. See No. 84 Emp'r-Teamster Jt. Counsel Pension Tr. Fund v. Am.  
3 W. Holding Corp., 320 F.3d 920, 925 n.2 (9th Cir. 2003).

4 If dismissal is warranted, it is generally without prejudice, unless it is clear that the  
5 complaint cannot be saved by any amendment. Sparling, 411 F.3d at 1013.

6 **2. Motion to strike**

7 Federal Rule of Civil Procedure 12(f) provides that the court "may strike from a  
8 pleading any insufficient defense or any redundant, immaterial, impertinent, or  
9 scandalous matter." Fed. R. Civ. P. 12(f). "The function of a [Rule] 12(f) motion to strike  
10 is to avoid the expenditure of time and money that must arise from litigating spurious  
11 issues by dispensing with those issues prior to trial." Whittlestone, Inc. v. Handi-Craft  
12 Co., 618 F.3d 970, 973 (9th Cir. 2010).

13 Motions to strike are not favored and "should not be granted unless it is clear that  
14 the matter to be stricken could have no possible bearing on the subject matter of the  
15 litigation." Colaprico v. Sun Microsystem, Inc., 758 F. Supp. 1335, 1339 (N.D. Cal. 1991).  
16 When a court considers a motion to strike, it "must view the pleadings in light most  
17 favorable to the pleading party." Uniloc v. Apple, Inc., 2018 WL 1640267, at \*1 (N.D. Cal.  
18 Apr. 5, 2018). A court must deny the motion to strike if there is any doubt whether the  
19 allegations in the pleadings might be at issue in the action. In re 2TheMart.com, Inc.,  
20 Sec. Litig., 114 F. Supp. 2d 955, 965 (C.D. Cal. 2000). Ultimately, the decision "to grant  
21 a motion to strike lies within the sound discretion of the district court." Rees v. PNC  
22 Bank, N.A., 308 F.R.D. 266, 271 (N.D. Cal. 2015).

23 **B. Legal Analysis**

24 **1. HUSD's motion to dismiss**

25 **a. School district immunity**

26 In its motion to dismiss, HUSD argues that it is immune from liability under both  
27 the federal and state False Claims Act. It argues that California school districts are "arms  
28 of the state" and thus entitled to state sovereign immunity. HUSD also argues that both

1 the federal and state versions of the FCA impose liability only on a “person” who makes a  
2 false claim, and that a school district is not a “person” for purposes of the statutes.

3 Fallon’s opposition does not contest the immunity of the school district.

4 The Ninth Circuit has indeed concluded that school districts are immune from FCA  
5 liability. Stoner v. Santa Clara Office of Educ., 502 F.3d 1116 (9th Cir. 2007).

6 The Stoner court first explained that the FCA subjects to liability any “person” who  
7 knowingly presents, or causes to be presented, a false claim for payment to the  
8 government. Id. at 1121. Prior to Stoner, the Supreme Court had held that a state  
9 agency is not a “person” for FCA purposes. Vt. Agency of Natural Res. v. United States  
10 ex rel. Stevens, 529 U.S. 765, 787-88 (2000). The Stoner court applied that reasoning  
11 and held that school districts are arms of the state and thus immune to FCA liability.<sup>3</sup> 502  
12 F.3d at 1123.

13 Importantly, the Stoner court specifically concluded that, even if the language of  
14 the FCA did not limit liability only to “persons,” the school district would still be immune  
15 under the Eleventh Amendment. 502 F.3d at 1123. In other words, there was both a  
16 statutory and a constitutional basis for finding the school district immune.

17 The California Supreme Court in Wells v. One2One Learning Foundation also  
18 concluded that, under the California False Claims Act, public school districts may not be  
19 sued because they are not “persons” under the Act. 39 Cal.4th 1164, 1189-90 (2006).

20 Thus, because HUSD is immune to claims brought under the federal and state  
21 False Claims Act, its motion to dismiss is GRANTED on that basis and the first through  
22 sixth causes of action against it are DISMISSED without leave to amend.

23 **b. Individual immunity**

24 While Fallon does not contest the immunity of the school district, he does contest  
25 the immunity of the individual school district defendants. The school district defendants  
26

27 \_\_\_\_\_  
28 <sup>3</sup> The court notes that this holding applies only to FCA claims involving false claims for  
payment. The issue of immunity for FCA-related retaliation claims will be discussed  
separately below.

1 are: Matthew Wayne, Miriam Delgadillo, Luci Rogers, and Tami Watson. The SAC states  
2 that these defendants are being sued in their individual capacities. SAC, ¶¶ 20, 21, 24,  
3 26.

4 HUSD argues that the employees were acting “within the course and scope of  
5 their employment,” and thus should be entitled to the same immunity as their public-entity  
6 employer.

7 The Ninth Circuit in Stoner addressed the issue of individual defendant immunity  
8 for state employees. 502 F.3d 1116. The court concluded that “state employees sued in  
9 their individual capacities are persons who may be subject to liability for submitting a  
10 false claim to the United States.” 502 F.3d at 1124. As mentioned above, the SAC  
11 specifies that the individual HUSD defendants are being sued in their individual, not  
12 official, capacities. And because the California FCA is “patterned after” the federal FCA,  
13 defendants acting outside the scope of their employment would not be immune under  
14 either law. Wells, 39 Cal.4th at 1187.

15 HUSD makes the related argument that, because the school district indemnifies its  
16 employees, a suit against the individual employees is “tantamount” to a suit against the  
17 district, and thus the same immunity should apply.

18 However, indemnification would apply only if the individual defendants were acting  
19 in the scope of their employment. As mentioned above, Fallon alleges that the individual  
20 defendants were acting outside of their scope of employment in this case. Moreover, the  
21 Stoner court directly addressed the indemnification argument, holding that “the fact that a  
22 state may choose to indemnify the employees for any judgment rendered against them”  
23 does not change the immunity analysis. 502 F.3d at 1125.

24 Thus, because Fallon alleges that the individual defendants were not acting within  
25 the scope of their employment, the court denies HUSD’s motion to the extent that it seeks  
26 dismissal of the FCA claims against the individual defendants based on immunity.

27 **c. Sufficiency of the pleadings under Rule 9(b)**

28 Having already determined that the school district should be dismissed as immune



1 from FCA liability, the court will now address whether the SAC adequately states a claim  
2 against the individual HUSD defendants: Wayne, Delgadillo, Rogers, and Watson.

3 HUSD argues that the SAC does not state a claim against defendants Delgadillo  
4 or Watson because it uses conclusory terms like “falsely” and “illegally” without actually  
5 alleging the “specific content of the false representations.” HUSD addresses the bid-  
6 splitting allegations, arguing that they “describe nothing more than internal contract  
7 practices by a school district.” Dkt. 84 at 20. Regarding the alleged conflict of interest  
8 between Delgadillo and her son Emmanuel, HUSD argues that even if Delgadillo were  
9 “inflating” business for Bell Transit, she may have done so because “they were easier to  
10 work with and sent them more business.” Dkt. 84 at 21.

11 HUSD argues that the SAC does not state a claim against Rogers because the  
12 only allegation is that she “approved the increments” of the 2015-16 contract with Bell  
13 Transit. Dkt. 84 at 21.

14 HUSD then discusses the allegations against defendant Wayne. The SAC alleges  
15 that he submitted a proposed contract to the school board that “misrepresented and  
16 substantially overstated the number of students” transported by Bell Transit in 2015-16,  
17 and also “overstated the number of students to be served by Bell Transit in the 2016-17  
18 school year.” Dkt. 84 at 21. The SAC further alleges that Wayne submitted the contract  
19 for board approval without any public bidding process, even though a public bidding  
20 process was required. HUSD argues that these allegations are “not specific enough” to  
21 give Wayne “notice of the particular misconduct” alleged. HUSD also argues that the  
22 SAC does not allege that Wayne actually presented a fraudulent statement to the  
23 government, because Fallon alleges that he “himself prevented Wayne from moving  
24 forward with any improper conduct.”

25 Fallon’s opposition argues that Delgadillo and Watson caused false claims to be  
26 submitted “by reason of the falsely inflated charges issued in the contract.” Fallon further  
27 argues that “defendants” created false records “in the form of falsely characterized  
28 contracts and work orders related to their bid-splitting.” Fallon also argues that any

1 contracts issued in violation of state bid-splitting laws are automatically rendered void,  
2 making any payment on them illegal. Fallon similarly argues that the “fatal” conflict of  
3 interest between HUSD employee Delgadillo and her son Emmanuel at Bell Transit  
4 rendered the relevant contracts void.

5 The Ninth Circuit has spelled out the level of detail needed to withstand a Rule  
6 9(b) challenge in a false claims case. Ebeid ex rel. U.S. v. Lungwitz, 616 F.3d 993, 998  
7 (9th Cir. 2010). In Ebeid, a plaintiff-relator filed suit against a physician who owned a  
8 health-care business, based on the generalized claim that the physician was “engaged in  
9 the unlawful corporate practice of medicine,” thus making all of the business’s Medicare  
10 claims fraudulent. 616 F.3d at 995. The court concluded that these allegations lacked  
11 the particularity required by Rule 9(b), as they were instead a “global indictment” of the  
12 defendant’s business. Id. at 1000. However, the Ebeid court also explained the level of  
13 specificity that would be needed, and took a position that was less exacting than some  
14 other circuits.

15 Specifically, at the time Ebeid was decided, some circuits had taken the position  
16 that a plaintiff-relator must identify “representative examples of false claims to support  
17 every allegation.” The Ebeid court rejected that approach, and instead “join[ed] the Fifth  
18 Circuit in concluding, in accord with general pleading requirements under Rule 9(b), that  
19 it is sufficient to allege ‘particular details of a scheme to submit false claims paired with  
20 reliable indicia that lead to a strong inference that claims were actually submitted.’” 616  
21 F.3d at 998-99 (“In our view, use of representative examples is simply one means of  
22 meeting the pleading obligation.”).

23 Thus, the relevant standard for analyzing the SAC’s allegations is whether they  
24 allege “particular details of a scheme” to submit false claims, along with “reliable indicia  
25 that lead to a strong inference that claims were actually submitted.” The court will now  
26 apply the Ebeid standard to the three categories of alleged wrongdoing, as set forth in the  
27 ‘background’ section of this order.  
28

1                                    **i.            Alleged wrongdoing – category (1)**

2            Category (1) covers the complaint’s allegations that HUSD employees were  
3            inflating the number of special needs students in need of taxi transportation. See SAC,  
4            ¶¶ 48-56.

5            The alleged “falsity” is straightforward here – the number of students needing  
6            transportation. Fallon alleges that the individual HUSD defendants falsely overstated the  
7            number of students needing individual transportation.

8            Also, the fact that the number of individually-transported students was so  
9            drastically decreased after Fallon’s complaint serves as “reliable indicia” that false claims  
10           were actually submitted. As alleged in the SAC, no fewer than 135 students per year  
11           received individual transportation from 2011 to 2016. Then, after Fallon complained, the  
12           number dropped to 13 the next year. SAC, ¶¶ 53-54.

13           HUSD takes issue with Fallon attributing a “monetary” motive to the individual  
14           defendants without more specificity, but the Ninth Circuit has actually held that a plaintiff-  
15           relator “need not allege that the individual defendants personally profited from such false  
16           submissions.” Stoner, 502 F.3d at 1124. The FCA requires only a false submission, it  
17           does not require the person making a false submission “to obtain a personal benefit from  
18           the wrongful act.” Id.; see also U.S. v. Bourseau, 531 F.3d 1159, 1167 (9th Cir. 2008)  
19           (“No proof of specific intent to defraud is required. The requisite intent is the knowing  
20           presentation of what is known to be false, as opposed to innocent mistake or mere  
21           negligence.”).

22           As to the allegations of category (1), Fallon has adequately stated a claim for  
23           “presentation” of false claim under section 3729(a)(1)(A) and making a “false record or  
24           statement” under section 3729(a)(1)(B) (and their state law equivalents)<sup>4</sup> as to  
25           defendants Delgadillo and Watson, who are alleged to have “handled exclusively” the taxi  
26           contracts. SAC, ¶ 57. HUSD’s motion to dismiss is DENIED to the extent that it seeks  
27           dismissal of those claims.

28           \_\_\_\_\_  
<sup>4</sup> The court will separately discuss the “reverse False Claims Act” causes of action below.

1           As to defendant Wayne, the complaint alleges that he presented documents to the  
2 school board that “overstated” the number of students needing/receiving transportation.  
3 SAC, ¶ 67. Because this case is still in the pleading stage, the court concludes that  
4 Fallon has adequately alleged the “particular details of a scheme” to submit false claims,  
5 along with “reliable indicia that lead to a strong inference” that the claims were actually  
6 submitted, and Wayne’s inflation of numbers is alleged to be part of the same scheme as  
7 Delgadillo and Watson’s alleged inflation of numbers. Accordingly, HUSD’s motion to  
8 dismiss is DENIED to the extent it seeks dismissal of the category (1)-related claims for  
9 “presentation” of false claim under section 3729(a)(1)(A) and making a “false record or  
10 statement” under section 3729(a)(1)(B) (and their state law equivalents) as to defendant  
11 Wayne.

12           The complaint does not allege that defendant Rogers was involved in any alleged  
13 number-inflation. Thus, HUSD’s motion to dismiss is GRANTED as to defendant Rogers  
14 as to all claims related to category (1). However, out of an abundance of caution, the  
15 court will grant leave to amend, to allow plaintiff to have one additional opportunity to  
16 state a claim against defendant Rogers relating to the alleged inflation of the number of  
17 students needing individual taxi transportation.

18                           **ii.           Alleged wrongdoing – category (2)**

19           Category (2) covers the allegations that the HUSD defendants split bids to avoid  
20 the \$45,000 threshold for requiring school board approval and competitive bidding. See  
21 SAC, ¶¶ 57-72.

22           In contrast to category (1), the alleged “falsity” in category (2) is not as  
23 straightforward. While it is true that California public contracting law prohibits the splitting  
24 of projects for the purpose of evading competitive bidding, it does not automatically follow  
25 that submission of an unlawfully-split contract is “false” or “fraudulent.”

26           While there is no controlling authority on point, the parties’ arguments focus on a  
27 relevant case from the D.C. Circuit, U.S. ex rel. Siewick v. Jamieson Science and  
28 Engineering, Inc., 214 F.3d 1371 (D.C. Cir. 2000). The relevant law at issue in Siewick

1 was a “revolving door” restriction on former government employees working on  
2 government contracts. The Siewick relator argued that every contract on which the  
3 former government employee worked was “tainted” by the revolving door violation, and  
4 thus “self-destructed into voidness.” Id. at 1375, 1376. The court rejected that argument,  
5 holding instead that any revolving door violation merely gave the government the option  
6 to void the contract. Id. at 1377. The court explained that the government could have  
7 many reasons for continuing to honor the contract: “the officials authorized to decide  
8 might regard the violation as minor, they might think that the criminal penalties provide  
9 ample punishment of the present violation and deterrence of future ones, [or] they might  
10 be concerned that disaffirmance would unduly impede future transactions with the  
11 contracting firm.” Id. In short, “longrun interests often argue against pushing legal rights  
12 to the hilt.” Id.

13 A state appeals court reached a similar conclusion in another case, concluding  
14 that improper contracts may be “declared void,” but are not automatically rendered void.  
15 San Bernadino County v. Superior Court, 239 Cal.App.4th 679 (2015).

16 Fallon does cite case law for the proposition that the competitive bidding  
17 requirement in this case is different than the “revolving door” rules in Sienick.  
18 Specifically, Fallon cites a California Supreme Court case from 1942 stating that  
19 municipal contracts approved without the required competitive bidding process are “void”  
20 and “cannot be ratified.” Miller v. McKinnon, 20 Cal.2d 83, 88 (1942). However, other  
21 than providing a citation to Miller, Fallon does not connect the dots and provide examples  
22 of courts applying Miller to the context of the False Claims Act. Based on the arguments  
23 made in the papers, HUSD’s motion is GRANTED as to the category (2)-related  
24 allegations against all individual defendants. However, Fallon is granted leave to amend.

25 **iii. Alleged wrongdoing – category (3)**

26 Category (3) covers the allegations that the HUSD defendants failed to disclose a  
27 conflict of interest between HUSD employee Miriam Delgadillo and her son Emmanuel,  
28 an employee of Bell Transit. See SAC, ¶¶ 73-82.

1           The alleged “falsity” is not straightforward here. Fallon’s theory is that the failure  
2 to disclose the conflict of interest rendered it void, and therefore false. In that sense, this  
3 theory is similar to the competitive bidding theory. And Fallon has also cited case law  
4 where the California Supreme Court held that a contract affected with a “prohibited”  
5 financial conflict of interest is “void from its inception.” Lexin v. Superior Court, 47 Cal.4th  
6 1050, 1073 (2010). However, the Lexin court also acknowledged that not every conflict  
7 of interest renders a contract void. Some alleged conflicts might be only “remote”  
8 interests, and some might implicate only “minimal” interests, and in those instances, the  
9 contracts would not automatically be rendered void. Id.

10           More importantly, as with category (2), Fallon provides no support for connecting  
11 the dots between an allegedly-invalid contract and a False Claims Act cause of action.  
12 As a result, the court GRANTS HUSD’s motion to the extent it seeks dismissal of the  
13 category (3) allegations against the individual defendants. Again, out of an abundance of  
14 caution, the court grants plaintiff leave to amend.

15                           **d.       Reverse false claims**

16           The court addresses the “reverse false claims” causes of action separately  
17 because they can be dismissed as a whole, regardless of the allegation categories. A  
18 “reverse” FCA claim is called “reverse” because, rather than fraudulently taking money  
19 from the government, these claims cover the fraudulent failure to return money owed to  
20 the government. The Ninth Circuit has explained that a “reverse” FCA claim cannot be a  
21 simple repackaging of a standard FCA claim, because “Congress intended the reverse  
22 false claims provision to apply only to existing legal duties to pay or deliver property.”  
23 U.S. v. Bourseau, 531 F.3d 1159, 1169 (9th Cir. 2008) (internal citation omitted).

24           The reverse FCA causes of action in this case are merely repackaged versions of  
25 standard FCA claims. Fallon claims that defendants wrongfully claimed money from the  
26 government, and then claims that the retention of that falsely-claimed money is itself a  
27 reverse claims act violation. That is not what the statute was intended to cover.

28           The Bourseau case explains what a successful reverse FCA cause of action looks

1 like. In that case, the defendant was a Medicare provider, and received estimated  
2 “interim” payments from the government throughout the year for covered Medicare  
3 services. At the end of each reporting period, the provider was required to report any  
4 “overpayments” made by the government. A bench trial established that the defendant  
5 had “concealed and decreased amounts they were obligated to repay to Medicare,” and  
6 thus were liable for a reverse FCA claim. 531 F.3d at 1170. That is not the situation  
7 alleged in the SAC, and thus, HUSD’s motion is GRANTED to the extent it seeks  
8 dismissal of both the federal and state reverse FCA causes of action. Because this  
9 deficiency could not be cured by amendment, no leave to amend is granted.

10 **e. Retaliation**

11 **i. School district liability**

12 HUSD argues that its immunity from FCA liability should also provide immunity  
13 from liability for a retaliation claim. As mentioned above, Fallon did not actually contest  
14 the district’s immunity.

15 HUSD largely relies on the reasoning of the Ninth Circuit’s opinion in Stoner.  
16 However, the case does not apply with the same force here. As discussed above, the  
17 Stoner court found that school districts were immune from FCA liability for two reasons:  
18 (1) the FCA “presentation” and “false records” provisions limit liability only to “a person”  
19 who violates the statute, and a school district was not a person, and (2) the Eleventh  
20 Amendment precludes liability against an arm of the state.

21 In the context of retaliation claims, argument (1) does not apply, because the Ninth  
22 Circuit has held that section 3730(h) applies to “employers,” not just to “persons.”  
23 Hopper v. Lockheed Martin Corp., 668 F.3d 1037, 1044 (9th Cir. 2012). While a school  
24 district is not a “person,” it can be an “employer.”

25 Argument (2) does appear to apply to the school district. That said, HUSD cites a  
26 Ninth Circuit case where the court did not find a school district to be automatically  
27 immune from retaliation liability under section 3730, and instead examined the facts to  
28 see if the district was liable. U.S. ex rel. Hopper v. Anton, 91 F.3d 1261 (9th Cir. 1996).

1           Because Fallon did not challenge the school district’s immunity, the court  
2 considers Fallon to have waived any opposition to the argument, and the court will  
3 GRANT HUSD’s motion to dismiss the retaliation claim against the school district without  
4 leave to amend. The court does not reach the merits of whether a school district is  
5 automatically immune from retaliation liability under section 3730.

6                           **ii.           Individual liability**

7           The next issue is the viability of Fallon’s retaliation claims against the individual  
8 HUSD defendants.

9           As mentioned above, the federal FCA retaliation statute has been interpreted to  
10 impose liability only on an “employer” who retaliates against an employee. HUSD argues  
11 that the individual defendants were not Fallon’s “employer,” and thus cannot be subjected  
12 to liability under the FCA. However, HUSD cites no controlling case law for this  
13 proposition under federal law. In fact, it again cites Hopper, which undercuts its  
14 argument, because in Hopper, a retaliation claim against an individual defendant (the  
15 school principal) went all the way to a jury. 91 F.3d at 1269.

16           However, even if individual defendants can be theoretically held liable for  
17 retaliation under federal law, the complaint still lacks any specific retaliation-related  
18 allegations against any individual defendants. For that reason, HUSD’s motion to dismiss  
19 the seventh cause of action is GRANTED as to the individual defendants, though Fallon  
20 will be given leave to amend this claim as to the individual defendants.

21           The state-law retaliation analysis is different. The state retaliation law originally  
22 limited its applicability to an “employer,” but it was amended in 2014 to also cover “any  
23 person acting on behalf of an employer.” Cal. Labor Code § 1102.5(a). However, even  
24 after the amendment, courts have been unwilling to conclude that individual employees  
25 may be liable for retaliation. See Minor v. FedEx Office & Print Services, 182 F.Supp.3d  
26 966, 990 (N.D. Cal. 2016) (“the court declines to determine whether individual liability is  
27 available under § 1102.5.”); see also United States ex rel. Lupo v. Quality Assurance  
28 Services, Inc., 242 F.Supp.3d 1020, 1030 (S.D. Cal. 2017) (“the court concludes that if



1 the California Supreme Court were ever to consider the issue, it would hold that there can  
2 be no individual liability under section 1102.5.”). That said, there is no controlling Ninth  
3 Circuit authority on the issue.

4 Even putting aside the immunity issue, the complaint does not allege any specific  
5 retaliation-related conduct by the individual defendants. For that reason, the state-law  
6 retaliation claim is DISMISSED, but out of an abundance of caution, Fallon will be given  
7 leave to amend his state law retaliation claim against the individual defendants.<sup>5</sup>

8 **2. Bell Transit’s motion to dismiss**

9 Some of the issues raised by Bell Transit’s motion were already addressed above  
10 in the context of HUSD’s motion, so the court will not repeat the analysis here. For  
11 instance, the reverse FCA claims are dismissed for the same reasons explained above.  
12 And the claims arising out of categories (2) and (3) of the false claim allegations (i.e., the  
13 public bidding-related and conflict of interest-related allegations) are dismissed, with  
14 leave to amend, for the same reasons.

15 Other issues raised by HUSD – specifically, issues of immunity and retaliation –  
16 are not implicated by Bell Transit’s motion, so they will not be discussed here.

17 The only remaining issues raised by this motion revolve around the sufficiency of  
18 the category (1) allegations (i.e., inflating the number of special needs students in need of  
19 taxi transportation) as asserted against Bell Transit.

20 A threshold issue raised by Bell Transit is the argument that Emmanuel Delgadillo  
21 never actually worked for Bell Transit. Bell Transit first hints at this argument in a  
22 footnote in their motion (Dkt. 83 at 9, n.1), and then in the reply, it states that Emmanuel  
23 “in fact never worked at Bell Transit, *see infra* II.G,” but there is no section II.G – the reply  
24 goes from section II.F to section III. Dkt. 98 at 12.

25 The presumed reason why Bell Transit mentions this issue only obliquely is that it

26 \_\_\_\_\_  
27 <sup>5</sup> HUSD also argues that the federal and state retaliation claims should be dismissed for  
28 failure to state claims in separate counts as required by Rule 10(b). The court declines to  
impose such a penalty, though it does direct plaintiff to plead federal and state retaliation  
claims separately if he chooses to re-plead them in an amended complaint.

1 appears to concede that “the time to contest factual allegations is not now.” Dkt. 83 at 9,  
2 n.1. However, even taking the allegations as true that Emmanuel was an employee of  
3 Bell Transit, the basis for charging Bell Transit with knowledge of the alleged inflation  
4 scheme is not adequately alleged in the complaint.

5 In fact, the overall problem with the allegations against Bell Transit is that, even if  
6 the court finds the inflation-related allegations to state a claim, those allegations do not  
7 make clear how Bell Transit was involved in the actual presentation of a false claim (or  
8 any related false records/statements). While Bell Transit may have benefitted from any  
9 false inflation of student transportation needs made by HUSD, Fallon has not adequately  
10 alleged facts showing that Bell Transit was involved in either presenting a false claim, or  
11 causing a false claim to be presented, or causing a false record to be made or used. For  
12 that reason, Bell Transit’s motion to dismiss is GRANTED. For the same reasons  
13 described above in the context of HUSD’s motion, Fallon is granted leave to amend his  
14 first, second, fourth, and fifth causes of action against Bell Transit. Fallon is not granted  
15 leave to amend on his third and sixth causes of action for reverse false claims.

16 **3. Fallon’s motion to strike**

17 After Bell Transit filed its reply brief, Fallon filed a motion to strike Bell Transit’s  
18 allegedly-new arguments regarding the requirements of state contracting law. Bell  
19 Transit filed an opposition/response stating that the arguments were responsive to  
20 arguments raised in Fallon’s opposition brief, but also expressing its willingness to  
21 withdraw the challenged arguments, because the specifics of state contracting law are  
22 not critical to its argument that the complaint should be dismissed.

23 The court did not rely on the challenged arguments, and thus Fallon’s motion to  
24 strike is DENIED as moot.

25 **CONCLUSION**

26 For the foregoing reasons, the court rules as follows. HUSD’s motion to dismiss is  
27 GRANTED on all claims asserted against HUSD, without leave to amend.

28 As to the individual defendants, HUSD’s motion to dismiss is GRANTED in part

