



NO JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JULIE ZEMAN, on behalf of)	Case No. CV 11-05755 DDP (MRWx)
the UNITED STATES OF)	
AMERICA,)	
)	ORDER GRANTING DEFENDANT'S MOTION
Plaintiff,)	TO DISMISS
)	
v.)	
)	
USC UNIVERSITY HOSPITAL,)	[Dkt No. 10]
)	
Defendant.)	
_____)	

Presently before the court is Defendant USC University Hospital ("the Hospital")'s Motion to Dismiss. Having considered the submissions of the parties and heard oral argument, the court grants the motion and adopts the following order.

I. Background

The Medicare program provides certain health care benefits to eligible elderly and disabled people. See Maximum Comfort Inc. v. Sec'y of Health and Human Servs., 512 F.3d 1081, 1083 (9th Cir. 2007); Vencor Inc. v. Nat'l States Ins. Co., 303 F.3d 1024, 1026 (9th Cir. 2002); Alhambra Hosp. v. Thompson, 259 F.3d 1071, 1072 (9th Cir. 2001). Hospitals are reimbursed through private fiscal

1 administrators, who are themselves regulated by the Department of
2 Health and Human Services. Alhambra Hosp., 259 F. 3d at 1072.

3 Relator Julia Zeman is covered by Medicare. (Complaint ¶ 11.)
4 Zeman "receives her Medicare services through a Medicare managed
5 plan administered by third party companies" (Compl. ¶ 12.)
6 Zeman underwent foot surgeries at USC Hospital on August 25, 2008,
7 April 30, 2009, October 27, 2009, and February 15, 2011. (Compl.
8 ¶¶ 14-16, 32.) Dr. David Thorardson performed the surgeries.
9 (Compl. ¶ 11.) Zeman later received Hospital bills that Zeman
10 alleges are improper in two ways. (Compl. ¶ 13, 18, 19, 21.)
11 First, Zeman alleges that the Hospital improperly billed her for
12 post-operative office visits within ninety days of a surgery, in
13 violation of Medicare regulations. (Compl. ¶¶ 18, 19, 35, 38, 41.)
14 Second, Zeman alleges that the Hospital improperly billed her for
15 medical services that were not provided at any Hospital facility.
16 (Compl. ¶ 21.)

17 On July 13, 2011, Zeman filed a qui tam complaint against the
18 Hospital for violations of the False Claims Act, 31 U.S.C. §§ 3729-
19 3733. The complaint alleges that the Hospital knowingly presented
20 false or fraudulent claims to Medicare and used false records to
21 get the fraudulent claims approved. The government did not
22 intervene.¹ The Hospital now moves to dismiss Zeman's complaint.

23 **II. Legal Standard**

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26 ¹ Under the False Claims Act, 31 U.S.C. §§ 3729-3733, a
27 private party may bring suit, under seal, on behalf of the
28 government as a qui tam relator. If the government elects not to
intervene, the case proceeds as a normal civil action. See
Aflatooni ex rel United States v. Kitsap Physicians Serv., 314 F.
3d 955, 998 n.2 (9th Cir. 2002).

1 A complaint will survive a motion to dismiss when it contains
2 "sufficient factual matter, accepted as true, to state a claim to
3 relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S.
4 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544,
5 570 (2007)). When considering a Rule 12(b)(6) motion, a court must
6 "accept as true all allegations of material fact and must construe
7 those facts in the light most favorable to the plaintiff." Resnick
8 v. Hayes, 213 F.3d 443, 447 (9th Cir. 2000). Although a complaint
9 need not include "detailed factual allegations," it must offer
10 "more than an unadorned, the-defendant-unlawfully-harmed-me
11 accusation." Iqbal, 556 U.S. at 678. Conclusory allegations or
12 allegations that are no more than a statement of a legal conclusion
13 "are not entitled to the assumption of truth." Id. at 679. In
14 other words, a pleading that merely offers "labels and
15 conclusions," a "formulaic recitation of the elements," or "naked
16 assertions" will not be sufficient to state a claim upon which
17 relief can be granted. Id. at 678 (citations and internal
18 quotation marks omitted).

19 "When there are well-pleaded factual allegations, a court should
20 assume their veracity and then determine whether they plausibly
21 give rise to an entitlement of relief." Id. at 679. Plaintiffs
22 must allege "plausible grounds to infer" that their claims rise
23 "above the speculative level." Twombly, 550 U.S. at 555.
24 "Determining whether a complaint states a plausible claim for
25 relief" is a "context-specific task that requires the reviewing
26 court to draw on its judicial experience and common sense." Iqbal,
27 556 U.S. at 679.

28 **III. Discussion**

1 To prevail on a False Claims Act claim, a plaintiff must show
2 that (1) the defendant made a claim against the United States, (2)
3 the claim was false or fraudulent, and (3) the defendant knew that
4 the claim was false or fraudulent. Aflatooni ex rel United States
5 v. Kitsap Physicians Serv., 314 F. 3d 955, 1000 (9th Cir. 2002).
6 False Claims Act complaints must also satisfy the heightened
7 pleading standard of Federal Rule of Civil Procedure 9(b). Cafasso
8 ex rel. United States v. General Dynamics C4 Systems, Inc., 637
9 F.3d 1047, 1054 (9th Cir. 2011). Rule 9(b) requires that a
10 pleading identify, with particularity, the "who, what, when, where,
11 and how, of the misconduct charged, as well as what is false and
12 misleading about the purportedly fraudulent statement, and why it
13 is false." Id. at 1954-1055 (citing Ebeid ex rel. United States v.
14 Lungwitz, 616 F.3d 993, 998 (9th Cir. 2010) (internal quotations
15 and alterations omitted)).

16 It is a "fairly obvious notion" that a False Claims Act suit
17 requires a false claim. Cafasso, 637 F.3d at 1055 (citing
18 Aflatooni, 314 F.3d at 997.) Zeman's complaint does not allege
19 that the Hospital submitted any claims to the United States. Zeman
20 argues that she has nevertheless satisfied the false claim element
21 because she has alleged that she "receives her Medicare services
22 through a medicare managed plan administered by third party
23 companies." (Compl. ¶ 12; Opp. at 8.) The mere fact that
24 Plaintiff received a bill, however, does not necessarily establish
25 that the service was covered by Medicare in the first instance or
26 indicate that the Hospital submitted any claims, let alone false or
27 fraudulent claims, to the United States.

1 In the absence of a properly pled false claim, a complaint may
2 nevertheless warrant the inference that false claims are part of an
3 alleged fraudulent scheme. Cafasso, 637 F.3d at 1056. It is not
4 enough, however "to describe a private scheme in detail but then to
5 allege simply and without any stated reason . . . that claims
6 requesting illegal payments must have been submitted." Aflatooni,
7 314 F.3d at 1002 (quotation and citation omitted). Here, the
8 complaint only alleges that Zeman received bills for certain
9 services on certain dates. As such, the complaint does not allege
10 any particular nefarious scheme with sufficient detail to warrant
11 the inference that the Hospital actually and knowingly submitted
12 false claims to the United States.

13 **IV. Conclusion**

14 For the reasons stated above, Defendant's Motion to Dismiss
15 is GRANTED, with leave to amend.² Any amended complaint shall be
16 filed within fourteen days of the date of this order.

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18 IT IS SO ORDERED.

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21 Dated: February 19, 2013


DEAN D. PREGERSON
United States District Judge

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² The court does not here address whether Defendant's billing
practices are permissible under Medicare regulations.