United States of America ex rel. Relator LLC v. Steven Sunshine et al.
8:23-cv-00134-JVS-ADS

TENTATIVE Order Regarding Motion to Dismiss [37]

Before the Court is Defendant The Shady Canyon Golf Club, Inc.'s ("Shady Canyon") motion to dismiss. (Mot., Dkt. No. 37.) Plaintiff Relator LLC ("Relator"), who brought this claim on behalf of the United States, filed an opposition. (Opp'n, Dkt. No. 38.) The United States did not file an opposition.[1] Shady Canyon replied. (Reply, Dkt. No. 39.)

For the following reasons, the Court **GRANTS** the motion with leave to amend within twenty-one (21) days.

I. BACKGROUND

Unless otherwise specified, the following factual background is taken from Relator's Complaint. (See Complaint, Dkt. No. 1.) Shady Canyon is an exclusive, members-only country club located in Irvine, California. (Id. ¶ 3.) Shady Canyon is not open to the general public and restricts membership independent of the club's capacity. (Id. ¶ 4.)

In March of 2020, the Coronavirus Aid, Relief, and Economic Security Act ("the CARES Act") became law and provided emergency assistance to individuals, families and businesses impacted by the coronavirus pandemic. (Id. ¶ 23.) The CARES Act authorized loans under the Paycheck Protection Program ("PPP") to eligible small businesses struggling with expenses. (Id. ¶¶ 2, 24.) The loans were administered through the Small Business Administration ("SBA"). (Id. ¶ 25.) The SBA maintained that private clubs which limit membership for reasons other than capacity were ineligible to obtain PPP loans. (Id. ¶ 6.) Applicants for PPP loans were required to fill out SBA Forms 2483 and 2484, which both contained certifications that the applicant was eligible to receive a loan under the rules in effect at the time the application was submitted. (Id. ¶¶ 30–37.)

[1] While the United States chose not to intervene in this action, it requested an opportunity to be heard before ruling or granting a motion to dismiss. (See Dkt. No. 26 at 3.)

Relator initiated this claim under seal in January 23, 2023. (Dkt. No. 1.) Relator alleges that Shady Canyon knowingly and intentionally made false claims in order to obtain a PPP loan. (Id. ¶ 7.) SBA relied on Shady Canyon's false claims in granting the loan. (Id. ¶ 10.) This resulted in Shady Canyon receiving a PPP loan for $1,689,200.00, approved on April 3, 2020, by the SBA for the full amount. (Id. ¶ 22.) Relator's Complaint asserts that Shady Canyon's conduct violates the False Claims Act ("FCA"), 31 U.S.C. § 3729. (Id. ¶ 59.)

The United States investigated these allegations and declined to intervene in this action. (Dkt. No. 26.) The Court subsequently unsealed the docket on January 13, 2025. (Dkt. No. 27.) On May 29, 2025, Shady Canyon filed the present motion.

II. LEGAL STANDARD

Under Rule 12(b)(6), a defendant may move to dismiss for failure to state a claim upon which relief can be granted. A plaintiff must state "enough facts to state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). A claim has "facial plausibility" if the plaintiff pleads facts that "allow[] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

In resolving a Rule 12(b)(6) motion under Twombly, the Court must follow a two-pronged approach. First, the Court must accept "all well-pleaded" factual allegations as true, and construe such allegations "in the light most favorable to the non-moving party." Daniels-Hall v. Nat'l Educ. Ass'n, 629 F.3d 992, 998 (9th Cir. 2010) (citation omitted). However, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Iqbal, 556 U.S. at 678 (citing Twombly, 550 U.S. at 555). Moreover, courts "are not bound to accept as true a legal conclusion couched as a factual allegation." Id. (quoting Twombly, 550 U.S. at 555). Second, assuming the veracity of well-pleaded factual allegations, the Court must "determine whether they plausibly give rise to an entitlement to relief." Id. at 679. This determination is context-specific, requiring the Court to draw on its experience and common sense, but there is no plausibility "where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct." Id.

Under Federal Rule of Procedure 9(b), a plaintiff must plead each element of a fraud claim with particularity, i.e., the plaintiff "must set forth more than the neutral facts necessary to identify the transaction." Cooper v. Pickett, 137 F.3d 616, 625 (9th Cir. 1997) (quoting Decker v. GlenFed, Inc. (In re GlenFed, Inc. Sec. Litig.), 42 F.3d 1541, 1548 (9th Cir. 1994)). A fraud claim must be accompanied by "the who, what, when, where, and how" of the fraudulent conduct charged. Vess v. Ciba-Geigy Corp. USA, 317 F.3d 1097, 1106 (9th Cir. 2003) (quoting Cooper, 137 F.3d at 627). "A pleading is sufficient under rule 9(b) if it identifies the circumstances constituting fraud so that a defendant can prepare an adequate answer from the allegations." Moore v. Kayport Package Express, Inc., 885 F.2d 531, 540 (9th Cir. 1989). Statements of the time, place, and nature of the alleged fraudulent activities are sufficient, but mere conclusory allegations of fraud are not. Id. Furthermore, though allegations based on information and belief are usually insufficient, in circumstances of corporate fraud, this rule may be relaxed as to matters within the opposing party's knowledge. Id.

However, Rule 9(b) provides that "[m]alice, intent, knowledge, and other conditions of a person's mind may be alleged generally." Fed. R. Civ. P. 9(b). Accordingly, "a party is not required to plead with specificity the alleged wrongdoer's state of mind." Body Jewelz, Inc. v. Valley Forge Ins. Co. 241 F. Supp. 3d 1084, 1089 (C.D. Cal. 2017) (citing Concha v. London, 62 F.3d 1493, 1503 (9th Cir. 1995).

III. DISCUSSION

A. Request for Judicial Notice

Shady Canyon filed a request for judicial notice ("RJN") in support of this motion. (Shady Canyon RJN, Dkt. No. 37-2.) Specifically, Shady Canyon seeks judicial notice of the following:

1. Excerpt of PPP borrower information for Shady Canyon obtained from PanedemicOversight.gov website ("Ex. A"), last accessed May 29, 2025. (Dkt. No. 37-4.)

2. Webpage displaying interim final rule titled *Business Loan Program Temporary Changes; Paycheck Protection Program*, 85 Fed. Reg.

20,811, issued by the Small Business Administration ("SBA") on federalregister.gov website on April 15, 2020 ("Ex. B"). (Dkt. No. 37-5.)

3. Webpage titled "First Draw PPP loan" on sba.gov website ("Ex. C"), last accessed May 29, 2025. (Dkt. No. 37-6.)

4. Excerpt of PPP borrower information for Shady Canyon obtained from ProPublica.org website ("Ex. D"), last accessed May 29, 2025. (Dkt. No. 37-7.)

5. An Irvine Standard articled dated November 2, 2021, titled "Shady Canyon: One of OC's Most Prestigious Communities" ("Ex. E"), last accessed May 29, 2025. (Dkt. No. 37-8.)

6. The Articles of Incorporation for Relator LLC, filed with the California Secretary of State on May 31, 2022, and publicly available at bizfileonline.sos.ca.gov ("Ex. F"). (Dkt. No. 37-9.)

7. A webpage displaying the profile of Anoush Hakimi, Esq. available at handslawgroup.com ("Ex. G"), last accessed May 29, 2025. (Dkt. No. 37-10.)

8. A webpage displaying the profile of Peter Shahriari, Esq. available at handslawgroup.com ("Ex. H"), last accessed May 29, 2025. (Dkt. No. 37-11.)

Under Federal Rule of Evidence 201, a court may take judicial notice of matters of public record if the facts are not "subject to reasonable dispute." Lee v. City of Los Angeles, 250 F.3d 668, 688–89 (9th Cir. 2001); see Fed. R. Evid. 201(b); see also Cal. Evid. Code § 452(c), (d), and (h), 453. The Court finds that Exhibits A, B, C, D, E, and F are matters of public record that are not subject to reasonable dispute. See Lee, 250 F.3d at 688–89; Fed. R. Evid. 201(b). Tellingly, Relator does not dispute the RJN.

The Court takes notice of Exhibits G and H for the limited purpose of indicating what information was in the public realm, without verifying whether the

contents of these publications are true. See Von Saher v. Norton Simon Museum of Art at Pasadena, 592 F.3d 954, 960 (9th Cir. 2010).

Accordingly, the Court **GRANTS** Shady Canyon's request to take judicial notice of all eight exhibits, with the caveat that Exhibits E, G, and H are not to be taken for their truth.

B. Motion to Dismiss

Shady Canyon moves to dismiss for two reasons: (1) the FCA's public disclosure bar precludes Relator's claims, and (2) Relator's claims fail under Rule 12(b)(6) and the heightened pleading standard of Rule 9(b). (Mot. at 8.) Additionally, Shady Canyon seeks to dismiss the claims against Steven Sunshine ("Sunshine") and Jon Christy ("Mr. Christy") as individuals. (Id.) The Court takes each argument in turn.

1. FCA Public Disclosure Rule

The FCA "creates civil liability for 'any person who (A) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval; [or] (B) knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim.'" United States v. Allergan, Inc., 46 F.4th 991, 993 (9th Cir. 2022) (quoting 31 U.S.C. § 3729(a)(1)). "A private person, known as a *qui tam* relator, may bring a civil action under the FCA in the name of the U.S. government." Id. at 994. However, the FCA "provides limits on who can bring a *qui tam* action and the sources of information upon which they can base their suit." Id. (citing United States ex rel. Bennett v. Biotronik, Inc., 876 F.3d 1011, 1013 (9th Cir. 2017)).

In an effort to prevent "parasitic" or "opportunistic" *qui tam* actions, the FCA has a "public disclosure bar." See id. (citing Schindler Elevator Corp. v. United States ex rel. Kirk, 563 U.S. 401, 412 (2011)). The public disclosure bar provides that:

> The Court shall dismiss an action or claim under this section, unless opposed by the government, if substantially the same allegation 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[.]

31 U.S.C. § 3730(e)(4)(A). In the Ninth Circuit, courts must first determine if there is a qualifying public disclosure by examining three criteria: (1) whether the disclosure at issue occurred through one of the channels specified in the statute; (2) whether the disclosure was "public"; and (3) whether the relator's action is "based upon" substantially the same allegations or transactions that are publicly disclosed. Allergan, 46 F.4th at 994. If there is a qualifying public disclosure, the court must then determine whether the relator is an "original source." Id. (quoting 31 U.S.C. § 3730(e)(4)(A)).

a. Qualifying Public Disclosure

i. Public Disclosure Through Statutory Channel

The first two criteria to establish a qualifying public disclosure require that the disclosure was "public" and that it occurred through a channel specified in the statute. See Allergan, 46 F.4th at 994. In this case, both criteria are satisfied.

The Complaint alleges that on April 3, 2020, Shady Canyon was approved for and received a PPP loan in the amount of $1,689,200.00. (Compl. ¶ 2, 45.) This information is publicly available on the Government's accountability website, PandemicOversight.gov. (Decl. of Evan C. Borges ("Borges Decl."), Dkt. No. 37-3, Ex. A.) This website is maintained by the federal government. See Inspector General Reform Act of 2008, Pub. L. 110-409, 122 Stat. 4302. Other courts have found—and this Court agrees—that PandemicOversight.gov constitutes a "Federal report" within the meaning of the FCA. See United States ex rel. Relator LLC v. Kellog, 2025 WL 897439, at *3 (S.D. Cal. Mar. 24, 2025); United States ex rel. Relator, LLC v. Kootstra, 2024 WL 3666470, at *3 (E.D. Cal. Aug. 6, 2024).

Thus, it can be said that this source is a public disclosure that occurred through one of the statutory channels.[2]

Moreover, Shady Canyon provides a ProPublica online source. (Borges Decl., Ex. D.) The Court finds that this source qualifies as "news media." Courts have generally construed "news media" to encompass a broad swath of publicly available information.[3] In this case, ProPublica is a well-established news source that has curated a publicly available database tracking all approved PPP loans and providing information about the businesses receiving such loans. (Borges Decl., Ex. D.)

However, of notable importance, the Court must determine whether the "Irvine Standard" article qualifies as "news media" for the purposes of the statute. The Court is persuaded by the thorough analysis conducted in Integra Med Analytics, 2019 WL 3282619, at *11. In Integra Med Analytics, the Court found that "'news media' cannot encompass *all* online information[.]" Id. (alteration in original). Rather, news media is more properly reserved for "methods of communication that are used to convey a particular type of information . . . commonly [] found in a newspaper, news broadcast, or other news source." Id. (discussing the definition of "news" and "medium").

On the one hand, the Irvine Standard appears to be a publication that could be of interest to a broad audience. Moreover, the tag line of the article reads "Master Plan, News." (Borges Decl., Ex. E.) At the end of the article, readers are encouraged to subscribe to the latest stories and "community news" from Irvine Standard. (Id.) On the other hand, the article has no author and reads similar to an advertisement for a housing community or development. Neither party has provided the Court with information about Irvine Standard's distribution or audience. On the basis of this limited information, the Court finds that the Irvine

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[2] Relator does not specifically dispute that the first two criteria are satisfied in this case. (Opp'n at 15–18.) Instead, Relator argues against the third criteria—that this action is not *solely* "based upon" the public disclosure. (Id.)

[3] See United States ex rel. Integra Med Analytics LLC v. Providence Health and Servs., 2019 WL 3282619, at *9–10 (C.D. Cal. July 16, 2019), rev'd and remanded on other grounds 854 F. App'x 840 (9th Cir. 2021) (collecting cases).

Standard article constitutes "news media" because it is of interest to the public and could be found in a newspaper, broadcast, or other news source.

ii. Action is "Based Upon" the Public Disclosure

The public disclosure bar only precludes claims where the allegations satisfying the elements of fraud are "substantially the same" as what was publicly disclosed through the statutory channels. See United States ex rel. Mateski v. Raytheon Co., 816 F.3d 565, 571 (9th Cir. 2016). The commonly used Springfield test provides a simple formula to determine whether this criteria is satisfied:

> [I]f X + Y = Z, Z represents the allegation of fraud and X and Y represent its essential elements. In order to disclose the fraudulent transaction publicly, the combination of X and Y must be revealed from which readers or listeners may infer Z, i.e., the conclusion that fraud has been committed.

Id. (quoting United States ex rel. Springfield Terminal Ry. Co. v. Quinn, 14 F.3d 645, 653–54 (D.C. Cir. 1994)). The "X" and the "Y" need not come from the same source. See Mateski, 816 F.3d at 571–72; Springfield, 14 F.3d at 655.

Relator argues that even if PandemicOversight.gov is a public disclosure, this website did not include both the "X" and "Y" that are required to create the inference of fraud. (Opp'n at 16.) Relator is correct that PandemicOversight.gov, alone, does not provide the "X" and the "Y." Searching for Shady Canyon on PandemicOversight.gov shows the full name of the business, the business type, the industry, the business age, the lender, the loan amount, the date approved, the loan amount forgiven, the number of jobs reported, and the number of loans. (Borges Decl., Ex. A.) In this case, PandemicOversight.gov provides only the "X": that Shady Canyon received PPP loans in the amount of $1,689,200.

Neither PandemicOversight.gov nor ProPublica are able to provide the "Y" (that Shady Canyon was a ineligible as a private club that restrictions membership for reasons other than capacity).[4] The Court disagrees with Shady Canyon's

[4] This is unlike Kootstra, 2024 WL 3666470, at *4, where PandemicOversight.gov listed the defendant as a "mortgage lender" on the public page. Because mortgage lenders were ineligible for loans, both the "X" and the "Y" were met through PandemicOversight.gov, alone.

characterization of the "Y" as merely the fact that private clubs are ineligible for PPP loans. (See Mot. 15 (relying on Kellog, 2025 WL 897439, at *3).) Such narrow construction misses the critical element that Shady Canyon is, itself, a private club. Thus, for Relator's claim to be barred, there must be another source of statutorily approved public information to show that Shady Canyon is a private club.

The Irvine Standard article fills this gap. In this article, Shady Canyon is described as a "private club," that accepts members "by invitation only," (Borges Decl., Ex. E.) Taken together with ProPublica and PandemicOversight.gov, it was a matter of public knowledge that Shady Canyon received PPP loans despite being ineligible as a private club that restricts members based on factors other than capacity. The Complaint alleges precisely these allegations. (See Compl. ¶¶ 6, 45–47.) Thus, by Relator's allegations, the prohibited conduct was publicly available prior to the filing of the Complaint.

b. Original Source

Because there is qualifying public disclosure, the case must be dismissed unless "the person bringing the action is an original source of the information." 31 U.S.C. § 3730(e)(4)(A). Relator does not contend that it is the original source of the information. Moreover, Relator does not cite to or provide the Court with any non-public information to show that it had independent knowledge of the alleged fraud.

Therefore, the Court finds that Relator's claims are precluded by the public disclosure bar.

2. Leave to Amend

"A party may amend its pleading once as a matter of course within: (A) 21 days after serving it, or (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of

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Id. In this case, "golf courses" are not ineligible for PPP loans. Rather, it is by virtue of exclusivity of membership that a golf course or club would become ineligible. The fact that Shady Canyon is a private club is *not* shown on PandemicOversight.gov.

a motion under Rule 12(b), (e), or (f), whichever is earlier." Fed. R. Civ. P. 15(a)(1). In all other cases, a party may amend its pleading only with written consent from the opposing party or the court's leave, which should be "freely give[n] . . . when justice so requires." Fed. R. Civ. P. 15(a)(2); see Morongo Band of Mission Indians v. Rose, 893 F.2d 1074, 1079 (9th Cir. 1990) (requiring that policy favoring amendment be applied with "extreme liberality").

In the absence of an "apparent or declared reason," such as undue delay, bad faith, dilatory motive, repeated failure to cure deficiencies by prior amendments, prejudice to the opposing party, or futility of amendment, it is an abuse of discretion for a district court to refuse to grant leave to amend a complaint. Foman v. Davis, 371 U.S. 178, 182 (1962); Moore, 885 F.2d at 538. The consideration of prejudice to the opposing party "carries the greatest weight." Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003). "Although there is a general rule that parties are allowed to amend their pleadings, it does not extend to cases in which any amendment would be an exercise in futility, or where the amended complaint would also be subject to dismissal." Steckman v. Hart Brewing, 143 F.3d 1293, 1298 (9th Cir. 1998) (internal citations omitted).

The public disclosure bar of the FCA is used "to strike a balance between 'encourag[ing] suits by whistle-blowers with genuinely valuable information, while discouraging litigation by plaintiffs who have no significant information of their own to contribute.'" Allergan, 46 F.4th at 994. This case appears to be in tension with the policy goals of the FCA, particularly where the basis for Relator's claims are found in the public domain. However, in light of the liberality in favor of granting leave to amend, the Court grants leave to amend.

IV. CONCLUSION

For the foregoing reasons, the Court **GRANTS** the motion with leave to amend within twenty-one (21) days.

IT IS SO ORDERED.