UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v. Case No: 8:21-cv-102-SCB-AEP

MIHIR TANEJA,

Defendant.

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ORDER

THIS CAUSE comes before the Court on Defendant Mihir Taneja's Motion to Dismiss Complaint (Doc. 17) and the United States' Response in Opposition (Doc. 18). For the reasons explained below, the Motion is denied.

I. BACKGROUND

The United States brings a two-count Complaint against Defendant Mihir Taneja, alleging that he violated the False Claims Act ("FCA"), 31 U.S.C. § 3729(a)(1)(A) (Count I), and conspired to violate the FCA, 31 U.S.C. § 3729(a)(1)(C) (Count II), by causing Oldsmar Pharmacy to file fraudulent claims with TRICARE, a federal health program. The Complaint alleges that Oldsmar Pharmacy paid kickbacks to a marketing company, Centurion Marketing, who in turn marketed compound medications (pain and scar creams) to patients and then referred those patients to Oldsmar Pharmacy for fulfillment of the prescriptions

for those medications. The Complaint further alleges that Oldsmar Pharmacy sought reimbursement for some of those prescriptions from TRICARE, thereby violating the Anti-Kickback Statute ("AKS"), 42 U.S.C. §1320a-7b(b), and thus, the FCA.

In early 2015, the Government initiated an investigation of Oldsmar Pharmacy, Centurion Marketing, and their respective principals, Larry Smith ("Smith") and Kim Anderson ("Anderson"). The investigation resulted in the filing of a *qui tam* action. *U.S. ex rel. Silva, et al. v. Vici Marketing, LLC, et al., No. 8:15-cv-444-T-33TGW*. Through discovery in that litigation, the United States concluded that Taneja may be liable under the FCA. (*Id.* at 3). The United States then sought information from Taneja through both formal and informal means. After unsuccessfully attempting to resolve the potential civil claims against Taneja, the United States filed the instant lawsuit. (*Id.*)

Taneja seeks dismissal of the Complaint, pursuant to Rules 9(b) and 12(b)(6), Federal Rules of Civil Procedure, on grounds that it is founded on conclusory allegations and improper inferences. (Doc. 17). Taneja does not contest the sufficiency of the United States' allegations that the subject referral arrangement resulted in the submission of claims to TRICARE that were rendered false by the payment of kickbacks. Taneja also does not contend that the kickbacks were immaterial to the United States' decision to pay the submitted claims. Rather, Taneja argues that the Complaint does not sufficiently plead that he caused the

presentment of the false claims to TRICARE. In turn, the United States maintains that its allegations as to causation are pled with sufficient particularity.

II. STANDARD OF REVIEW

In deciding a motion to dismiss, the district court is required to view the complaint in the light most favorable to the plaintiff. *See Murphy v. Federal Deposit Ins. Corp.*, 208 F.3d 959, 962 (11th Cir. 2000) (citing *Kirby v. Siegelman*, 195 F.3d 1285, 1289 (11th Cir. 1999)). The Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim. Instead, Rule 8(a)(2) requires a short and plain statement of the claim showing that the pleader is entitled to relief in order to give the defendant fair notice of what the claim is and the grounds upon which it rests. *See Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1964 (2007) (citation omitted). As such, a plaintiff is required to allege "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Id.* at 1965 (citation omitted). While the Court must assume that all allegations in the complaint are true, dismissal is appropriate if the allegations do not "raise [the plaintiff's] right to relief above the speculative level." Id. (citation omitted). The standard on a Rule 12(b)(6) motion is not whether the plaintiff will ultimately prevail in his or her theories, but whether the allegations are sufficient to allow the plaintiff to conduct discovery in an attempt to prove the allegations. *See Jackson v. Hospital Corp. of Am. Mideast, Ltd.*, 800 F.2d 1577, 1579 (11th Cir. 1986).

With respect to a claim of fraud, a plaintiff must satisfy the requirements of Rule 9(b), Federal Rules of Civil Procedure, in order to survive a motion to dismiss. *Souran v. Travelers Ins. Co.*, 982 F.2d 1497, 1511 (11th Cir. 1993) (citations omitted). Complaints alleging FCA violations are subject to Rule 9(b)'s heightened pleading requirements. *U.S. ex rel. Clausen v. Lab'y Corp. of Am., Inc.*, 290 F.3d 1301, 1309 (11th Cir. 2002) (superseded by statute on other grounds). Rule 9(b) provides that "[i]n all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity." The complaint must allege "facts as to time, place, and substance of the defendant's alleged fraud, specifically the details of the defendant's allegedly fraudulent acts, when they occurred, and who engaged in them." *Hopper v. Solvay Pharm., Inc.*, 588 F.3d 1318, 1324 (11th Cir. 2009).

III. DISCUSSION

Taneja contends that the Complaint does not sufficiently plead that he caused the presentment of false claims to TRICARE. The United States argues that the allegations of the Complaint sufficiently plead that Taneja played a substantial role in causing the kickback scheme and that the submission of claims to TRICARE was a reasonably foreseeable consequence of the scheme. For the reasons that follow, the Court agrees with the United States and finds that Taneja's Motion demands more than Rule 9(b) requires.

A. Legal Background

The FCA imposes liability upon any person who "knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval." 31 U.S.C. § 3729(a)(1)(A). Under Section 3729(a)(1)(A), liability exists either where the defendant directly submits the claims, or where the defendant "causes" another to submit the false claim. The provisions of the FCA, "considered together, indicate a purpose to reach any person who knowingly assisted in causing the government to pay claims which were grounded in fraud, without regard to whether that person had direct contractual relations with the government." *U.S. ex rel. Marcus v. Hess*, 317 U.S. 537, 544-45, 63. S. Ct. 379, 384, 87 L.Ed. 443, __ (1943). The FCA defines "knowingly" as "actual knowledge," "reckless disregard," or "deliberate ignorance" of truth or falsity, and expressly "require[s] no proof of specific intent to defraud." 31 U.S.C. § 3729(b)(1). A false claim is "material" if it has a natural tendency to influence, or is capable of influencing, the Government's payment decision. *Id.* at § 3729(b)(4); *see also Universal Health Services, Inc. v. United States ex rel. Escobar*, __ U.S. __, 136 S. Ct. 1989, 1994-95, 195 L.Ed.2d 348 (2016).

A claim that violates the AKS is *per se* a false or fraudulent claim under the FCA. 42 U.S.C. § 1320a-7b(g). The AKS prohibits any person or entity from making or accepting payment to induce or reward any person for referring, recommending, or arranging for federally-funded medical services, including

services provided under the TRICARE program. 42 U.S.C. § 1320a-7b(b). To prove an underlying violation of the AKS, the Government must show that the defendant acted "knowingly and willfully." To act knowingly, a defendant must have acted "voluntarily and intentionally and not because of a mistake or by accident." *United States ex rel. Williams v. Health Mgmt. Assocs., Inc.*, No. 3:09-cv-130, 2014 WL 2866250, at *12 (M.D. Ga. June 24, 2014). Willfully means that an act was committed "voluntarily and purposely" with the "intent to do something the law forbids, that is with a bad purpose, either to disobey or disregard the law." *United States v. Stark*, 157 F.3d 833, 837-38 (11th Cir. 1998). The Government does not need to show that the defendant acted with specific intent to violate the AKS. 42 U.S.C. § 1320a-7b(h). A defendant's "willfulness" can be (and often is) proven through circumstantial evidence. *U.S. v. Wetzel*, 514 F.2d 175, 177 (8th Cir. 1975).

The Eleventh Circuit recently adopted proximate causation to determine whether a defendant may be held liable under the FCA for causing the submission of false claims. *Ruckh v. Salus Rehab., LLC*, 963 F.3d 1089, 1107 (11th Cir. 2020). Causes are proximate where they have a natural and foreseeable tendency to produce the harm in question, directly relate to that harm, and constitute a substantial factor in bringing about the harm. *See Staub v. Proctor Hosp.*, 562 U.S. 411, 419 (2011). A defendant may be found to have caused the submission of a claim if his conduct was (1) a "substantial factor" in inducing the submission of

false claims and (2) "if the submission of claims for reimbursement was reasonably foreseeable or anticipated as a natural consequence of defendants' conduct." *Ruckh*, 963 F.3d at 1107 (quoting *U.S. ex rel. Schiff v. Marder*, 208 F. Supp. 3d 1296, 1312-13 (S.D. Fla. 2016)).

B. The United States' Complaint

Here, the Complaint's allegations against Taneja satisfy both elements of the *Ruckh* proximate causation test. While Taneja may deny his role in the fraudulent scheme or present counter evidence at a later stage, the Court must draw reasonable inferences in favor of the United States on a motion to dismiss. With respect to the first element, the Complaint alleges that Taneja was a substantial factor in bringing about the false claims by: (1) initiating the discussions with Anderson of Centurion; (2) proposing a referral arrangement whereby Oldsmar Pharmacy would pay Centurion a percentage of the amount insurance paid to Oldsmar for prescriptions referred by Centurion; (3) meeting with Smith (of Oldsmar Pharmacy) and Anderson to discuss how they "were going to distribute the money," resulting in a handshake agreement between the three of them; (4) subsequently emailing Anderson and disputing her characterization of the agreed financial terms; and (5) being involved in all of the discussions with counsel about how to solve the problem of Oldsmar Pharmacy paying Centurion for TRICARE claims. (Doc. 1, ¶¶ 36, 40-41, 50-53). Taneja is alleged to be Smith's business partner and also appears to have a financial interest in Oldsmar Pharmacy. (Doc. 1,

¶ 34).[1] The Complaint also alleges that Taneja, an experienced healthcare executive, was aware of the prohibitions of the AKS. (*Id.* at ¶ 64).

As to the second element, the Complaint alleges that the submission of claims to TRICARE as a result of the kickback arrangement was reasonably foreseeable to Taneja by November 2014—when Taneja and Smith began consulting with counsel regarding the arrangement given that TRICARE prescriptions were being referred under the scheme. (*Id.* at ¶¶ 50, 52). The United States correctly asserts that these allegations sufficiently plead that the submission of TRICARE claims was a reasonably foreseeable consequence of the scheme and that Taneja took critical acts in furtherance of the scheme. *See United States ex rel. Tran v. Comput. Sci. Corp.,* 53 F. Supp. 3d 104, 127 (D.D.C. 2014) ("even where the non-submitting entity was not the prime mover of the alleged fraud, courts have found such entities potentially liable on the theory that they caused the presentation of false claims where they had agreed to take certain critical actions in furtherance of the fraud").

Furthermore, a defendant may be liable for conspiracy under the FCA when he conspired with one or more persons to have a false claim paid by the United

[1] The Complaint alleges that Taneja referred to Oldsmar Pharmacy as his pharmacy, described the support staff at the pharmacy as his, lent employees from a company he owned to the pharmacy, discussed how much money he made from the pharmacy, and that the pharmacy did not negotiate a deal or communicate with its attorneys without him. (Doc. 1 at ¶¶ 34, 36, 40, 47, 53, 55).

States; one or more of the conspirators performed an act to further the conspiracy; and the United States suffered damages. *Corsello v. Lincare*, 428 F.3d 1008, 1014 (11th Cir. 2005). Here, the Complaint alleges a meeting between Taneja, Smith, and Anderson, described by Taneja in a December 2014 email, whereupon they discussed the distribution of the proceeds of the arrangement, which resulted in a "handshake" agreement between the three of them. (Doc. 1, ¶ 40). The Complaint then describes discussions subsequent to the meeting in which Taneja, Smith, and Anderson worked out their differences over the financial terms. (*Id.* at ¶¶ 40-41). The Complaint further alleges that pursuant to the agreement, Oldsmar Pharmacy submitted claims to TRICARE and paid kickbacks to Centurion for referring TRICARE prescriptions; and the United States paid over $19 million for fraudulent claims. (*Id.* at ¶¶ 42-44, 55-56). Therefore, the United States, having alleged the agreement, overt acts, and damages, adequately alleges a conspiracy. *Corsello*, 428 F. 3d at 1014. The conspiracy allegations, particularly given the analysis with respect to the underlying false claim allegations, are specific enough to fulfill Rule 9(b)'s requirements.

IV. CONCLUSION

In light of the foregoing, Taneja's Motion to Dismiss is due to be denied with respect to both Counts of the United States' Complaint.

ACCORDINGLY, it is **ORDERED AND ADJUDGED**:

Defendant Mihir Taneja's Motion to Dismiss Complaint (Doc. 17) is **DENIED**. Defendant is directed to file his Answer to the Complaint on or before August 13, 2021.

DONE and **ORDERED** at Tampa, Florida, this 3rd day of August, 2021.

SUSAN C. BUCKLEW
United States District Judge