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Appendix A

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MELCHOR KARL T. LIMPIN, ex. rel. United States of America,

Plaintiff - Appellant,

v.

UNITED STATES OF AMERICA, ex rel. Melchor Karl T. Limpin,

Interested Party - Appellee,

GAVIN NEWSOM, in their personal capacities and all Undocumented Persons and their respective employers in California; et al.,

Defendants - Appellees.

No. 23-4287

D.C. No. 3:23-cv-00399-DMS-DEB
Southern District of California,
San Diego

ORDER

Before: CLIFTON, CALLAHAN, and BENNETT, Circuit Judges.

The district court certified that this appeal is frivolous and revoked appellant's in forma pauperis status. *See* 28 U.S.C. § 1915(a). On January 17, 2024, this court ordered appellant to explain in writing why this appeal should not be dismissed as frivolous. *See* 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious).

Upon a review of the record, the responses to the court's January 17, 2024 order, and the opening brief filed on January 8, 2024, we conclude this appeal is

frivolous. We therefore deny appellant's motion to proceed in forma pauperis (Docket Entry No. 8) and dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2).

No further filings will be entertained in this closed case.

DISMISSED.

Appendix B

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES ex rel. MELCHOR KARL T. LIMPIN,

Plaintiff,

v.

GAVIN NEWSOM, et al.,

Defendants.

Case No.: 23-cv-0399-DMS-DEB

ORDER RESPONDING TO REFERRAL NOTICE

Plaintiff Relator Melchor Karl T. Limpin, proceeding *pro se*, brings this qui tam action against California Governor Gavin Newsom, California State Senate President *pro tempore* Toni G. Atkins, Assembly Speaker Anthony Rendon, various Doe individual defendants and their respective employers for colluding to violate the False Claims Act ("FCA") by permitting "unauthorized foreigners" to obtain COVID-19 relief, file tax returns, and receive Medicaid benefits.

On April 5, 2023, the Court granted Plaintiff's Motion to Proceed in Forma Pauperis. (ECF No. 6.) On October 24, 2023, the Court denied Plaintiff's Motion to Appoint Counsel and granted the United States' Motion to Dismiss. (ECF No. 28.) Accordingly, the Court denied Plaintiff's pending motions as moot. (*Id.*) On December 7, 2023, the Court denied Plaintiff's Motion for Reconsideration. (ECF No. 35.) Subsequently, Plaintiff filed a

Notice of Appeal to the United States Court of Appeals for the Ninth Circuit. (ECF No. 36.)

The Ninth Circuit now refers this matter to the trial court for the "limited purpose of determining whether in forma pauperis status should continue for this appeal or whether the appeal is frivolous or taken in bad faith." (ECF No. 39.) 28 U.S.C. § 1915(a)(3) provides that an appeal may not be taken in forma pauperis if the trial court "certifies in writing that it is not taken in good faith." An appeal is considered "frivolous" under 28 U.S.C. §1915(a)(3) if the complaint "lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 326 (1989).

Upon review of the record herein, the Court finds Plaintiff's appeal lacks an arguable basis in law or in fact. Plaintiff's suit was dismissed because Plaintiff is a pro se litigant and such litigants may not prosecute a *qui tam* suit against the United States. *Stoner v. Santa Clara Cnty. Office of Educ.*, 502 F.3d 1116, 1127–28 (9th Cir. 2007). Further, the Court denied Plaintiff's Motion to Appoint Counsel because "appointment of counsel should be allowed only in exceptional cases," and the Court did not find Plaintiff's suit to be one of those exceptional cases. *U.S. ex rel. Gardner v. Madden*, 352 F.2d 792, 793 (9th Cir. 1965). Plaintiff's Motion for Reconsideration failed to address these issues and was dismissed as meritless. Accordingly, the Court certifies that Plaintiff's appeal is frivolous and therefore **REVOKES** Plaintiff's in forma pauperis status under 28 U.S.C. § 1915(a)(3).

IT IS SO ORDERED.

Dated: January 3, 2024

Hon. Dana M. Sabraw, Chief Judge
United States District Court

Appendix C

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES ex rel. MELCHOR KARL T. LIMPIN, Plaintiff, v. GAVIN NEWSOM, et al., Defendants.	Case No.: 23-cv-0399-DMS-AGS **ORDER (1) DENYING PLAINTIFF'S MOTION TO APPOINT COUNSEL; AND (2) GRANTING THE UNITED STATES' MOTION TO DISMISS**

Presently before the Court is Plaintiff Melchor Karl T. Limpin's First Amended Complaint, (ECF No. 7), Request for Judicial Notice, (ECF No. 8), Motion for Pro Bono Counsel, (ECF No. 11), United States' Notice of Election to Decline to Intervene, (ECF No. 16), Plaintiff's Motion for Compulsory Joinder (ECF No. 17), United States' Motion to Dismiss (ECF No. 24), Plaintiff's Motion for Order to Effect Service of Process by the U.S. Marshal (ECF No. 25), and Plaintiff's Motion to Disqualify Assistant U.S. Attorney (ECF No. 27.)

I.
BACKGROUND

Plaintiff Relator Melchor Karl T. Limpin, proceeding *pro se*, brings this qui tam action against California Governor Gavin Newsom, California State Senate President *pro*

tempore Toni G. Atkins, Assembly Speaker Anthony Rendon, various Doe individual defendants and their respective employers for colluding to violate the False Claims Act ("FCA") by permitting "unauthorized foreigners" to obtain COVID-19 relief, file tax returns, and receive Medicaid benefits. Plaintiff alleges these elected officials, named as Defendants in their individual capacities, conspired to cause undocumented individuals to present claims to Medi-Cal, the State of California's Medicaid program, which were false because federal Medicaid program prohibits reimbursement for medical assistance to undocumented persons. Plaintiff bases his claims on the enactment of California Senate Bill ("SB-88") and Senate Bill 139 ("SB-139"). He claims the millions of undocumented individuals in the state of California and their respective employers have concealed their immigration status by fraudulently claiming Medicaid health care expenditures, thereby defrauding the government.

II.

MOTION TO APPOINT COUNSEL

Plaintiff requests the Court appoint pro bono counsel pursuant to 28 U.S.C. § 1915(e)(1). (ECF No. 11.) Section 1915(e)(1) states a Plaintiff "may request an attorney to represent any person unable to afford counsel." Appointment of counsel in civil cases, "as is the privilege of proceeding in forma pauperis, [is] a matter within the discretion of the district court. It is a privilege and not a right." *U.S. ex rel. Gardner v. Madden*, 352 F.2d 792, 793 (9th Cir. 1965). "[A]ppointment of counsel should be allowed only in exceptional cases." *Id.* at 794. When determining whether "exceptional circumstances" exist, a court must consider "the likelihood of success on the merits as well as the ability of the petitioner to articulate his claims *pro se* in light of the complexity of the legal issues involved." *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009). These factors must be viewed together, neither is dispositive. *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986).

The factual bases for Plaintiff's complaint are familiar to this Court. In *Limpin v. California*, No. 23-cv-37, 2023 WL 3213862 (S.D. Cal. May 2, 2023), Plaintiff filed a

lawsuit against most of the same defendants using the same factual bases as he did here. That case was dismissed with prejudice, without leave to amend. *Id.* at *5. There, Plaintiff sued forty-two defendants, including the State of California and various elected officials in their individual capacities alleging violations of the Equal Protection Clause of the Fourteenth Amendment, Racketeer Influenced and Corrupt Organizations (RICO) under 18 U.S.C. §§ 1661–64, civil rights violations under 42 U.S.C. § 1985 and conspiracy to interfere with civil rights under 42 U.S.C. § 1985(3). *Id.* at *2. "Plaintiff's causes of action derive[d] from the implementation of California Senate Bill ("SB-88") and Senate Bill 139 ("SB-139")." *Id.*

The same is true here. Just like in *Limpin v. California*, Plaintiff bases his causes of action on SB-88 and SB-139. Unlike that case, though, here he labels his causes of action as falling under the FCA. Labels aside, these allegations all stem from the same alleged RICO conspiracy the court dismissed in *Limpin v. California*. Plaintiff is barred from bringing this action because the challenged conduct is of elected officials acting in their official capacities to enact SB-88 and SB-139, and such conduct is immune under the Eleventh Amendment. *Stoner v. Santa Clara Cnty. Office of Educ.*, 502 F.3d 1116, 1121 (9th Cir. 2007).

As to the allegations against Doe individual defendants and their respective employers, this Court gave Plaintiff leave to amend once before. (*See* ECF No. 6.) Plaintiff failed to do so. In his motion for counsel, Plaintiff notes he will require the assistance of counsel and an investigator to determine the "Unknown Names" of defendants in this action. (*Id.* at 7.) "Although 'a *pro se* litigant will seldom be in a position to investigate easily the facts necessary to support the case,' the need for discovery does not render the legal complexity of a case extraordinary." *Zamaro v. Moonga*, 656 Fed. App'x 297, 299 (9th Cir. 2016) (quoting *Wilborn*, 789 F.2d at 1331). If the Court were to grant appointment of counsel to Plaintiff here, "*pro se* civil litigants would be entitled to counsel in all circumstances, not only exceptional ones." *Siglar v. Hopkins*, 822 Fed. App'x 610, 612 (9th Cir. 2020).

The history of this case demonstrates that Plaintiff can articulate his claims pro se, despite any legal complexities.[1] Truly the only complexity of issues involved stem from Plaintiff's attempts to apply the FCA to facts that do not give rise to a claim. In his filings, Plaintiff makes legal arguments, cites to requisite authority, and recognizes the deficiencies with his pleadings. Plaintiff brought this motion for pro bono counsel because he learned, through the United States, that a pro se Plaintiff cannot prosecute a *qui tam* action if the United States declines to intervene. (ECF No. 11 at 1.) But a "[r]elator's inability to bring this action pro se does not by itself justify appointment of counsel in this case." *U.S. ex. rel. Hadi v. Pinal Cnty. Comm. College Dist. Gov. Bd.*, No. CV-13-00007, 2013 WL 4834020, at *1 (D. Ariz. Sept. 10, 2013). After careful consideration, the Court finds there are no exceptional circumstances present. Accordingly, Plaintiff's motion for pro bono counsel is **DENIED**.

III.
DISMISSAL OF ACTION

The FCA permits private citizens to bring *qui tam* actions with certain limitations. The United States is the real party in interest in such actions. *United States ex rel. Killingsworth v. Northrop Corp.*, 25 F.3d 715, 720 (9th Cir. 1994). The United States declined to intervene in this action. (ECF No. 16 at 1.) Because the Court has declined Mr. Limpin's request for appointment of counsel, Mr. Limpin remains a pro se litigant. The government argues that a pro se litigant may not prosecute a *qui tam* action against the United States. (Government's Opposition to Defendant's Motion ("Govt. Opp'n"), ECF No. 24, at 5.) This Court agrees. Non-attorneys may not represent the United States for "qui tam realtors are not prosecuting only their 'own case' but also representing the United States and binding it to any adverse judgment the realtors may obtain." *Id.* (quoting *Stoner*

[1] This is further demonstrated by Plaintiff's litigious history. Plaintiff is no stranger to the federal court system. He has appeared, pro se, in a variety of civil cases in this District, the Ninth Circuit, and the United States Supreme Court.

v. Santa Clara Cnty. Office of Educ., 502 F.3d 1116, 1127–28 (9th Cir. 2007)). Plaintiff, appearing pro se, cannot prosecute this *qui tam* action against the United States. The Court therefore **DISMISSES** this action with prejudice as to Plaintiff and without prejudice as to the United States.

IV.
CONCLUSION

For these reasons, the Court **HEREBY ORDERS**:

1. Plaintiff's Motion for Pro Bono Counsel (ECF No. 11) is **DENIED**.
2. United States' Motion to Dismiss (ECF No. 24) is **GRANTED.**
3. Plaintiff's Request for Judicial Notice (ECF No. 8) is **DENIED** as moot.
4. Plaintiff's Motion for Compulsory Joinder (ECF No. 17) is **DENIED** as moot.
5. Plaintiff's Motion for Order to Effect Service of Process (ECF No. 25) is **DENIED** as moot.
6. Plaintiff's Motion to Disqualify Assistant U.S. Attorney (ECF No. 27) is **DENIED** as moot.

IT IS SO ORDERED.

Dated: October 24, 2023

Hon. Dana M. Sabraw, Chief Judge
United States District Court

Appendix D

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES ex rel. MELCHOR KARL T. LIMPIN, Plaintiff, v. GAVIN NEWSOM, et al., Defendants.	Case No.:23-cv-0399-DMS-AGS **ORDER DENYING PLAINTIFFS' MOTION FOR RECONSIDERATION**

On October 24, 2023, the Court issued an order, denying Plaintiff's motion to appoint counsel and granting the United States' motion to dismiss. (ECF No. 28). Pending before the Court is Plaintiff's motion for reconsideration under Federal Rules of Civil Procedure ("FRCP") 59(e) or, in the alternative, 60(b)(1) or 60(b)(6). (ECF No. 31). The government filed a response in opposition (ECF No. 34). For the reasons discussed below, the Court denies Plaintiff's motion for reconsideration.

I. BACKGROUND

Plaintiff Relator Melchor Karl T. Limpin, proceeding *pro se*, brings this qui tam action against California Governor Gavin Newsom, California State Senate President *pro tempore* Toni G. Atkins, Assembly Speaker Anthony Rendon, various Doe individual defendants and their respective employers for colluding to violate the False Claims Act ("FCA") by permitting "unauthorized foreigners" to obtain COVID-19 relief, file tax

returns, and receive Medicaid benefits. Plaintiff alleges these elected officials, named as Defendants in their individual capacities, conspired to cause undocumented individuals to present claims to Medi-Cal, the State of California's Medicaid program, which were false because federal Medicaid program prohibits reimbursement for medical assistance to undocumented persons. Plaintiff bases his claims on the enactment of California Senate Bill ("SB-88") and Senate Bill 139 ("SB-139"). He claims the millions of undocumented individuals in the state of California and their respective employers have concealed their immigration status by fraudulently claiming Medicaid health care expenditures, thereby defrauding the government. On October 24, 2023, the Court granted the United States' motion to dismiss and entered final judgment. Accordingly, the Court dismissed Plaintiff's remaining motions as moot. On October 26, 2023, Plaintiff filed a motion for reconsideration of the final judgment.

II. LEGAL STANDARD

Federal Rule of Civil Procedure 59(e) permits a party to file a motion to alter or amend a judgment no later than 28 days after the entry of the judgment. Fed. R. Civ. P. 59(e). Ninth Circuit precedent has made clear that Rule 59(e) is an "extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources." *Wood v. Ryan*, 759 F.3d 1117, 1121 (9th Cir. 2014). District courts "enjoy considerable discretion in granting or denying the motion." *McDowell v. Calderon*, 197 F.3d 1253, 1255 n.1 (9th Cir. 1999). The Ninth Circuit has identified four grounds upon which a Rule 59(e) motion to alter or amend judgment may be granted:

> (1) if such motion is necessary to correct manifest errors of law or fact upon which the judgment rests; (2) if such motion is necessary to present newly discovered or previously unavailable evidence; (3) if such motion is necessary to prevent manifest injustice; or (4) if the amendment is justified by an intervening change in controlling law.

Allstate Ins. Co. v. Herron, 634 F.3D 1101, 1111 (9th Cir. 2011.)

Where a ruling has resulted in final judgment, a motion for reconsideration may be construed either as a motion to alter or amend judgment pursuant to Rule 59(e), or as a

motion for relief from judgment pursuant to Rule 60(b). *School Dist. No. 1J Multnomah Cty v. AC&S, Inc.*, 5 F.3d 1255, 1262 (9th Cir. 1993). Such a motion is construed as a Rule 59(e) motion if filed within 28 days of entry of the final judgment or as a Rule 60(b) motion if filed more than 28 days after judgment or order is entered. *See Am. Ironworks & Erectors, Inc. v. N. Am. Constr. Corp.*, 248 F.3d 892, 898–99 (9th Cir. 2001).

III. DISCUSSION

Plaintiff filed the instant motion for reconsideration under Federal Rule of Civil Procedure 59(e) or in the alternative, 60(b)(1) and 60(b)(6), two days after final judgment was entered. Because Plaintiff's motion was filed within 28 days of entry of the final judgment, the Court will treat it as a motion under Rule 59(e). *Id.*

Plaintiff contends that the judgment must be reconsidered due to "manifest error of law or fact" or "inadvertent mistake arising from oversight." (Pl. Mot. for Reconsideration ("Pl. Mot."), at 1, ECF No. 31.) Plaintiff asserts three arguments warranting reconsideration: (1) the Court erred in not deciding Plaintiff's motion for compulsory joinder before deciding Government's motion to dismiss; (2) the Court erred in vacating oral argument; and (3) the Court should assign a special master to ascertain the allegations of fraud. The Court will address each argument in turn.

First, the Court denied Plaintiff's motion for compulsory joinder because the Court granted the United States' motion to dismiss thereby rendering Plaintiff's motion for compulsory joinder moot. Plaintiff alleges that the Court was required to rule on his motion for compulsory joinder before the government's motion to dismiss because his motion was filed before the United States' motion. (Pl.'s Mot. for Reconsideration, ECF No. 31 at 2.) However, Plaintiff does not cite any authority to support this argument. Additionally, "when two or three motions are presented to a court, it has discretion to decide the order in which it would consider and decide them." *Hopotowit v. Spellman*, 753 F.2d 779, 782 (9th Cir. 1985). Thus, the Court did not commit a manifest error of law in deciding the United States' motion to dismiss before Plaintiff's motion for compulsory joinder.

Second, Plaintiff argues that the Court erred in vacating oral argument. However, Civil Local Rule 7.1(d)(1) states that "A judge may in the judge's discretion, decide a motion without oral argument." The Court did not err when it exercised its discretion to decide the motion without oral argument.

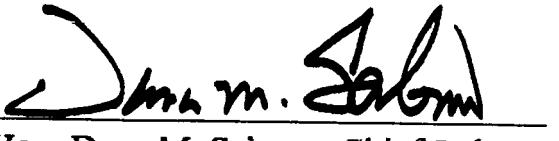
Third, Plaintiff requests the Court set a hearing date for a "Case Management Conference and to assign a special master, such as an Internal Revenue Service ("IRS") auditor pursuant to Federal Rules of Evidence 706. . . ." This is not a proper form of relief under Rule 59(e), thus the Court need not address the merits of this argument. "A motion for reconsideration should not be granted, absent highly unusual circumstances, unless the district court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in controlling law." *Kona Enterprises, Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000). Plaintiff has not presented such evidence. Thus, the Court does not find this to be one of those extraordinary circumstances warranting relief. The motion is **DENIED** and in the "interests of finality and conservation of judicial resources," this is the last motion the Court will hear in this matter. *Wood*, 759 F.3d 1117 at 1121.

IV. CONCLUSION AND ORDER

Based on the foregoing, the Court **DENIES** Plaintiff's Motion for Reconsideration.

IT IS SO ORDERED.

Dated: December 7, 2023



Hon. Dana M. Sabraw, Chief Judge
United States District Court

Appendix E

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

United States *ex rel.* Melchor Karl Y. Limpin, Plaintiff, v. Gavin Newsome, Toni G. Atkins, Anthony Rendon, and all Undocumented Persons with their Respective Employers in California, Defendants.	Case No.: 23-CV-0399-DMS (AGS) United States' Memorandum of Points and Authorities in Support of Its Motion to Dismiss First Amended Complaint Date: November 3, 2023 Time: 9:00 a.m. [No Oral Argument Unless Requested by the Court]

A *pro se* relator cannot prosecute a *qui tam* action on behalf of the United States because doing so would effectively appoint a non-attorney as counsel representing the United States. Relator Melchor Karl Y. Limpin is proceeding *pro se*. Although he has been afforded ample time to retain counsel, he has not done so. The Court should thus dismiss this action, with prejudice as to Relator and without prejudice as to the United States, because *pro se* Relator Limpin cannot maintain this *qui tam* action as a matter of law.

1. Background

Relator Melchor Karl Y. Limpin, proceeding *pro se*, filed a complaint under the *qui tam* provisions of the False Claims Act (FCA), 31 U.S.C. §§ 3729-3732, on approximately March 3, 2023. Relator alleged that Defendants, California Governor

Gavin Newsome, California State Senate President *pro tempore* Toni G. Atkins, California State Assembly Speaker Anthony Rendon, and "unauthorized foreigners," conspired to cause undocumented persons to present claims to Medi-Cal, the State of California's Medicaid program, which Relator alleged were false because the federal Medicaid program prohibits reimbursement for medical assistance to undocumented persons. Compl. ¶¶ 4, 17. Relator's sprawling allegations also included an alleged conspiracy by which "millions of undocumented persons" and their employers violated the False Claims Act because the undocumented persons were unlawfully admitted to the United States and concealed "their immigration status by fraudulently claiming Medicaid health care expenditures." *Id.* at ¶¶ 7, 15, 19. Relator prayed for recovery of "hundreds of billions of dollars." *Id.* at ¶ 44. The Court *sua sponte* dismissed the complaint without prejudice for failure to state a claim.

On approximately April 24, 2023, Relator filed the operative first amended complaint (FAC). The FAC appears to include similar allegations and appears to include new allegations such as alleging Governor Newsome violated the FCA because of some type of unclear conflict of interest. *See* Am. Compl. ¶ 41.

On June 21, 2023, the United States informed Relator that *pro se* relators cannot prosecute *qui tam* actions under the False Claims Act, and requested that, if Relator retains counsel, counsel contact the United States within one month. The United States later extended that deadline to August 7, 2023. To date, neither Relator nor any counsel has informed the United States that counsel has been retained.

The United States declined to intervene in this action—while always remaining the real party in interest—and the Court unsealed the case on August 30, 2023.[1]

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[1] Following the United States' declination, Relator filed a number of motions, some of which the Court rejected for failure to follow Civil Local Rule 7.1 and Chief Judge Sabraw's Chambers Rule 6.B repeatedly.

2. Argument

A. The False Claims Act.

The FCA is "the Government's primary litigative tool" for combating fraud. S. Rep. No. 99-345, at 2 (1986). The FCA applies broadly to address a wide variety of fraudulent schemes, and it was drafted "expansively . . . 'to reach all types of fraud, without qualification, that might result in financial loss to the Government.'" *Cook Cty. V. United States ex rel. Chandler*, 538 U.S. 119, 129 (2003).

The FCA authorizes the Attorney General to bring civil actions to enforce the Act, which imposes liability on anyone who "knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval" to the federal government. 31 U.S.C. § 3729(a).

The FCA contains a *qui tam* provision that permits private citizens, called relators, who have information regarding a fraud perpetrated on the federal Government, to bring civil actions in the Government's name. *Id.* § 3730(b)(1). After a *qui tam* action is filed, the United States may intervene and proceed with the action or it may decline to intervene. *See id.* § 3730(b)(2), (4).

Upon bringing a *qui tam* action, a relator must serve on the United States a copy of the complaint and a written disclosure of substantially all material evidence and information the relator possesses. *Id.* § 3730(b)(2). The complaint is filed under seal and *in camera*, and it remains under seal, which permits the United States to investigate the complaint's allegations. *See United States ex rel. Kelly v. Boeing Co.*, 9 F.3d 743, 746 (9th Cir. 1993).

B. A *pro se* relator cannot maintain a *qui tam* action because the United States is the real party in interest.

The FCA permits private citizens to bring *qui tam* actions, but certain limitations apply. The United States is always the real party in interest in such actions. *See United States ex rel. Killingsworth v. Northrop Corp.*, 25 F.3d 715, 720 (9th Cir.1994). And non-attorneys cannot represent anyone other than themselves.

See 28 U.S.C. § 1654 (stating that parties "may plead and conduct their own cases personally or by counsel"). In construing this provision, the Ninth Circuit has held that a *qui tam* action under the FCA does not involve solely the relator's interests, and it is thus not a relator's "own case" within the meaning of § 1654. *See Stoner v. Santa Clara Cty. Office of Educ.*, 502 F.3d 1116, 1126 (9th Cir. 2007). Although the FCA incentivizes relators to bring lawsuits on behalf of the United States by partially assigning the Government's damages claim to the relator, "the underlying claim of fraud always belongs to the government." *Id.* "Because *qui tam* relators are not prosecuting only their 'own case' but also representing the United States and binding it to any adverse judgment the relators may obtain," § 1654 does not permit *qui tam* relators to proceed *pro se* in FCA actions. *See id.* at 1126-27. Thus, a *pro se* relator cannot prosecute a *qui tam* action on behalf of the United States. *See, e.g., Bruzzone* v. *Intel Corp.,* 670 Fed. App'x 931, 932 (9th Cir. 2016) (mem.) (After the United States declined intervention, "[t]he district court properly struck Bruzzone's complaint and dismissed the action because Bruzzone improperly attempted to proceed *pro se* as a relator in a *qui tam* action alleging a conspiracy to defraud the United States."); *Rogers v. Sacramento County*, 293 Fed. App'x 466, 467 (9th Cir. 2008) (mem.) (After the United States declined intervention and notified the court that prosecution by *pro se* relators is disfavored, "[t]he district court properly dismissed the action without prejudice because a relator cannot prosecute a qui tam action pro se under the False Claims Act."); *Stoner,* 502 F.3d at 1127-28 (9th Cir. 2007) ("The [False Claims Act] itself does not authorize a relator to prosecute a § 3729 violation *pro se.*"); *United States ex rel. Donnellan v. Sayer Law Group, P.C.*, 2022 WL 5162128 (D. Ala. Oct. 5, 2022) (holding that Dollellan "may not serve as a relator[] because he is a self-represented party" and "[a]s a self-represented party, Mr. Donnellan does not have standing to bring this claim" while dismissing for lack of jurisdiction "because Mr. Donnellan does not have standing to bring *qui tam* claims as a self-represented litigant.") (appeal dismissed for failure to prosecute,

No. 22-35900 (9th Cir. 2022)); *Williams v. Dep't of Corrections*, 2013 WL 3305485, at *2-3 (W.D. Wash. June 27, 2013) (dismissing the relator's complaint *sua sponte* because "[t]his case was improperly filed *pro se*."); *see also United States ex rel. Tlatoani Teotl Tenamaxtle Trust ETO v. Polk*, No. 3:22-CV-01107-RSH-BLM (S.D. Cal. Mar. 28, 2023) (Order denying multiple motions filed by a *pro se* relator and stating that "[i]f Relator fails to appear through counsel by [April 18, 2023], the Court will dismiss this action." (citing *Stoner*)); *Turner v. U.S. Dep't of Educ.*, 2015 WL 4757055, at *2 (S.D. Cal. Aug. 10, 2015) (dismissing the relator's complaint *sua sponte* for failure to state a claim and providing that "[p]laintiff cannot bring a qui tam action on behalf of the United States without counsel.").[2] Courts thus require representation of relators in *qui tam* actions when the United States declines intervention and is not actively prosecuting the matter.

Here, underlying claims—to the extent such claims exist—belong to the United States as the real party in interest whose rights are at issue before the Court. The United States informed Relator over three months ago that *pro se* relators cannot prosecute *qui tam* actions under the False Claims Act. Relator has still not retained counsel. Because Relator has been afforded ample time and opportunity to obtain counsel and failed to do so, and because the United States' interests could be impaired by *pro se* Relator's actions in this case, dismissal is necessary.

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[2] The Ninth Circuit has barred *pro se* litigants from litigating others' claims in other contexts. *See, e.g., Johns v. Cty. of San Diego*, 114 F.3d 874, 876 (9th Cir. 1997) (a guardian or parent may not bring suit in federal court on behalf of a minor without first retaining an attorney); *In re Am. W. Airlines*, 40 F.3d 1058, 1059 (9th Cir. 1994) ("[c]orporations and other unincorporated associations must appear in court through an attorney"); *United States v. High Country Broad.*, 3 F.3d 1244, 1245 (9th Cir. 1993) (*per curiam*) (a non-lawyer president and sole shareholder of corporation cannot represent the corporation).

3. Conclusion

The Court should dismiss *pro se* Relator's *qui tam* action as required as a matter of law and because doing so will ensure the United States' interests are not impaired through the potential collateral estoppel and *res judicata* effects of *pro se* Relator's actions in this case. Relator has been afforded ample time and opportunity to retain counsel, yet he has not done so. Accordingly, the United States requests that the Court dismiss this action, with prejudice as to Relator and without prejudice as to the United States.

DATED: October 4, 2023

Respectfully submitted,

ANDREW R. HADEN
Acting United States Attorney

s/ Dylan Aste
DYLAN M. ASTE
Assistant United States Attorney

Attorneys for Plaintiff
United States of America