



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

DEC 19 2019

The Honorable Charles E. Grassley
Chairman
Committee on Finance
United States Senate
Washington, DC 20510

Dear Chairman Grassley:

This responds to your letter to the Attorney General dated September 4, 2019, regarding the Department of Justice's (Department) recent use of its statutory dismissal authority pursuant to the False Claims Act, 31 U.S.C. 3730(c)(2)(A).

As an initial matter, the Department underscores that it shares your view of the importance of the False Claims Act (the Act) and its *qui tam* provisions in combatting fraud against government agencies and programs. Largely because of your efforts to strengthen and reform the statute in 1986, the Act has become the government's single most important tool in combatting fraud. Since 1986, the Department has recovered over \$60 billion under the Act, more than 70 percent of which was recovered in connection with lawsuits filed pursuant to the statute's *qui tam* provisions. The Department appreciates the important contributions made by whistleblowers, as well as your staunch support of the Department's False Claims Act enforcement efforts.

While *qui tam* cases serve an important role in identifying fraud against taxpayer-funded programs, not every *qui tam* case advances this objective. In the limited instances where we have determined that a relator's continued pursuit of a *qui tam* case would undermine the goal of preventing fraud or other important governmental interests, we have sought dismissal. From January 1, 2018 to present, over 1,170 *qui tam* actions have been filed, and yet the Department has filed motions to dismiss only 45 cases pursuant to 31 U.S.C. § 3730(c)(2)(A) during the same period. These statistics demonstrate that the Department has exercised its dismissal authority judiciously and has allowed the vast majority of *qui tam* cases to proceed.

Enclosed please find a chart identifying 42 of the 45 cases that the government has moved to dismiss over the last 22 months; the other three actions remain under seal and thus are not listed. Although these cases involve unique factual and evidentiary considerations, the information below may provide some helpful context.

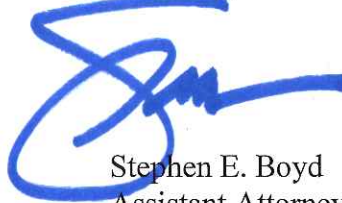
- Since January 1, 2018, more than 1,170 *qui tam* actions have been filed. Accordingly, the 45 cases that the United States has moved to dismiss since then account for less than 4 percent of the *qui tam* cases that were filed since January 1, 2018.
- The above referenced 45 cases involve a wide variety of federal agencies, including, but not limited to: the Department of Health and Human Services; the Department of Defense; the Department of Housing and Urban Development; the Department of Education; the Department of Energy; the Department of Commerce; the Department of Transportation; and the Department of the Treasury.
- Courts have rendered decisions in 26 of the 45 cases, granting the Department's motions to dismiss in 25 cases, and denying the Department's motion to dismiss in one case. In the one case where the government's motion was denied, the Department has appealed the decision.
- Ten of the cases the United States moved to dismiss were filed by the same for-profit private investment group that filed *qui tam* complaints throughout seven judicial districts against 38 defendants; the allegations in the 10 complaints were substantially the same (at times copied word-for-word) and all lacked merit.
- Twelve cases were filed by relators who were unrepresented by counsel, notwithstanding that every appellate court that has considered the question has concluded that *pro se* relators may not prosecute *qui tam* actions once the United States has declined to intervene.
- Two cases were filed by a relator who is alleged to have shorted the stock of the defendants named in his complaints.
- In several cases, the relators filed claims that are not legally cognizable under the False Claims Act.
- In ten cases, the affected agency expressed valid concern that the cases could undermine patient care. For that reason and others, the United States sought their dismissal.
- In one case, the Department cited, among other factors, the United States' interest in safeguarding classified information from inadvertent disclosure.

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With respect to each *qui tam* action filed, the Department investigates the matter and evaluates the facts, law, and claims asserted before deciding how to proceed. The Department seeks dismissal only when we have determined that the relator's pursuit of the case would adversely affect the government's interests. The fact that we have sought to dismiss fewer than 4% of cases reflects our serious commitment to allow appropriate *qui tam* matters to proceed. Neither the government, the taxpayers, nor future whistleblowers benefit when poorly devised cases proceed. As such, the Department strives to reach a decision that best protects the public interest in each case.

The Department is proud of its record of recoveries under the False Claims Act and greatly appreciates your continued support of the Act to combat fraud against the taxpayers. We hope this information is helpful. Please do not hesitate to contact this office if we may provide further assistance on this or any other matter.

Sincerely,



Stephen E. Boyd
Assistant Attorney General

Enclosure

**Qui Tam Actions for Which the United States Filed Motions to Dismiss
Pursuant to 31 U.S.C. § 3730(c)(2)(A) After January 1, 2018ⁱ**

	<u>CASE CITATION</u>	<u>STATUS</u>
1	<i>United States ex rel. Chang, et al. v. Children's Advocacy Ctr. of Delaware</i> , No. 1:15-cv-00442 (D. Del.)	Motion Granted
2	<i>United States ex rel. Maldonado v. Ball Homes, LLC, et al.</i> , No. 5:17-cv-00379 (E.D. Ky.)	Motion Granted
3	<i>United States ex rel. Stovall v. Webster Univ.</i> , No. 3:15-cv-03530 (D. S.C.)	Motion Granted
4	<i>United States ex rel. Kammarayil v. Sterling Operations, Inc., et al.</i> , No. 1:15-cv-01699 (D.D.C.)	Motion Granted
5	<i>United States ex rel. Davis, et al. v. Hennepin Cty., et al.</i> , No. 0:18-cv-01551 (D. Minn.)	Motion Granted
6	<i>United States ex rel. Schneider v. J.P. Morgan Chase Bank, N.A., et al.</i> , No. 1:14-cv-01047 (D.D.C.)	Motion Granted
7	<i>United States ex rel. Sibley v. Delta Reg'l Med. Ctr.</i> , No. 4:17-cv-00053 (N.D. Miss.)	Motion Granted
8	<i>United States ex rel. Browne, et al. v. CenseoHealth, LLC</i> , No. 4:18-cv-00347 (E.D. Tex.)	Motion Granted
9	<i>United States ex rel. Golden v. Kelley, et al.</i> , No. 3:18-cv-06051 (W.D. Wash.)	Motion Granted
10	<i>United States ex rel. De Sessa v. Dallas Cty. Hosp. Dist.</i> , No. 3:17-cv-01782 (N.D. Tex.)	Motion Granted
11	<i>United States ex rel. Henneberger v. Ticom Geomatics, Inc.</i> , No. 1:17-cv-00670 (E.D. Va.)	Motion Granted
12	<i>United States ex rel. Melhorn v. Hogan, et al.</i> , No. 3:18-cv-00236 (E.D. Tenn.)	Motion Granted
13	<i>United States ex rel. Johnson v. Raytheon Co.</i> , No. 3:17-cv-01098 (N.D. Tex.)	Motion Granted
14	<i>United States ex rel. Borzilleri, et al. v. AbbVie, Inc., et al.</i> , No. 1:15-cv-07881 (S.D.N.Y.)	Motion Granted

15	<i>United States ex rel. Borzilleri v. Bayer, AG, et al.</i> , No. 1:14-cv-00031 (D. R.I.)	Motion Granted
16	<i>Kelly v. Carson, et al.</i> , No. 8:18-cv-00532 (D. Neb.)	Motion Granted
17	<i>United States ex rel. Little v. Rolls-Royce North America, Inc., et al.</i> , No. 1:19-cv-0005 (W.D. Tex.)	Motion Granted
18	<i>United States ex rel. Graves v. ICANN, Inc., et al.</i> , No. 1:18-cv-05482 (N.D. Ga.)	Motion Granted
19	<i>United States ex rel. Davidheiser v. Capital Rail Constructors</i> , No. 1:19-CV-593 (E.D. Va.)	Motion Granted
20	<i>United States ex rel. Crandell v. Hardy Cty. Rural Dev. Corp.</i> , No. 2:18-cv-00124 (N.D. W. Va.)	Motion Granted
21	<i>United States ex rel. Backer v. Cooperative Rabobank, U.A., et al.</i> , No. 17-cv-02708 (S.D.N.Y.)	Motion Granted
22	<i>United States ex rel. Campie, et al. v. Gilead Sciences, Inc., et al.</i> , No. 3:11-cv-00941 (N.D. Cal.)	Motion Granted
23	<i>United States ex rel. Polansky, et al. v. Exec. Health Res., Inc., et al.</i> , No. 2:12-cv-04239 (E.D. Pa.)	Motion Granted
24	<i>United States ex rel. SMSPF, LLC, et al. v. EMD Serono, Inc., et al.</i> , No. 2:16-cv-05594 (E.D. Pa.)* ⁱⁱ	Motion Granted
25	<i>United States ex rel. Health Choice Group, LLC, et al. v. Bayer Corp., et al.</i> , No. 5:17-cv-00126 (E.D. Tex.)*	Motion Granted
26	<i>United States ex rel. Health Choice All., LLC, et al. v. Eli Lilly & Co., et al.</i> , No. 5:17-cv-00123 (E.D. Tex.)*	Motion Granted
27	<i>United States ex rel. SCEF, LLC, et al. v. AstraZeneca, PLC, et al.</i> , No. 2:17-cv-01328 (W.D. Wash.)*	Motion Granted
28	<i>United States ex rel. SMSF, LLC, et al. v. Biogen Inc., et al.</i> , No. 1:16-cv-11379 (D. Mass.)*	Dismissed on Defendants' Motion
29	<i>United States ex rel. SAPF, LLC, et al. v. Amgen, Inc., et al.</i> , No. 2:16-cv-05203 (E.D. Pa.)*	Dismissed by Relator
30	<i>United States ex rel. Miller, et al. v. AbbVie, Inc.</i> , No. 3:16-cv-02111 (N.D. Tex.)*	Dismissed by Relator
31	<i>United States ex rel. Carle, et al. v. Otsuka Holdings Co., et al.</i> , No. 1:17-cv-00966 (N.D. Ill.)*	Dismissed by Relator

32	<i>United States ex rel. Harman, et al. v. BNSF Ry. Co., et al.</i> , No. 1:17-cv-00059 (D. Mont.)	Dismissed by Relator
33	<i>United States ex rel. Lubemba v. Garda</i> , No. 5:17-CV-286 (M.D. Ga.)	Dismissed by Relator
34	<i>United States ex rel. Haule v. Univ. of Texas Health Science Ctr.</i> , No. 19-cv-00033 (W.D. Tex.)	Dismissed by Relator
35	<i>United States ex rel. Haule v. Heggemeier, et al.</i> , No. 19-cv-00034 (W.D. Tex.)	Dismissed by Relator
36	<i>United States ex rel. Haule v. Southwest Housing Compliance Corp.</i> No. 19-cv-0035 (W.D. Tex.)	Dismissed by Relator
37	<i>United States ex rel. Haule v. Austin, et al.</i> , No. 19-cv-00036-RP-AWA (W.D. Tex.)	Dismissed by Relator
38	<i>United States ex rel. Vanderlan v. Jackson HMA, LLC, et al.</i> , No. 3:15-cv-00767 (S.D. Miss.)	Motion Pending
39	<i>United States ex rel. NHCA-TEV, LLC, et al. v. Teva Pharm., et al.</i> , No. 2:17-cv-02040 (E.D. Pa.)*	Motion Pending
40	<i>United States ex rel. Farmer, et al., v. The Republic of Honduras, et al.</i> , No. 1:17-cv-00470 (S.D. Ala.)	Motion Pending
41	<i>United States ex rel. Mikovits v. Whittemore Peterson Institute, et al.</i> , No. 3:15-cv-409 (D. Nev.)	Motion Pending
42	<i>United States ex rel. CIMZNHCA, LLC, et al. v. UCB, Inc., et al.</i> , No. 3:17-cv-00765 (S.D. Ill.)*	Motion Denied; Appeal Pending

ⁱ This list is based on a review of the Civil Division's records as of October 25, 2019. There are three additional *qui tam* actions that remain under seal for which the United States has filed a motion to dismiss pursuant to 31 U.S.C. 3730(c)(2)(A), of which two have been granted and one remains pending. Because these actions currently remain under seal, they are not listed.

ⁱⁱ The use of an asterisk (*) denotes an action filed by the *qui tam* investment group, Venari Partners LLC (dba National Healthcare Analysis Group).