UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	SACV 18-270-JVS(DFMx)	Date	July 16, 2019
Title	United States of America, ex rel. Marc Lazo v. Vratsinas Construction Co., et al.		

Present: The Honorable	**James V. Selna, U.S. District Court Judge**

Lisa Bredahl	Not Present
Deputy Clerk	Court Reporter
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
Not Present	Not Present

Proceedings: [IN CHAMBERS] Order Regarding Motion to Dismiss

Defendants Vratsinas Construction Company; VCC, LLC; VCC Global, LLC; VCC Construction Corp. (together—"VCC"); KSJ Construction, LLC ("KSJ"); Demo Specialties, Inc. ("Demo"); Construction Management Services, Inc. ("CMSI"); Diversified Construction Materials and Services, LLC ("Diversified"); Sam Alley ("Alley"); Donald Davis ("Davis"); and Jason Keeney ("Keeney") (all together—"Defendants") filed a motion to dismiss the Third Amended Complaint ("TAC"). Marc Lazo ("Lazo") opposed the motion. (Opp'n, Dkt. No. 61.) Defendants replied. (Reply, Dkt. No. 63.)

For the following reasons, the Court **grants** the motion to dismiss.

I. BACKGROUND

On February 16, 2018, the original Complaint in this case for violations of the False Claims Act ("FCA") was filed listing "John Doe" as relator. (Complaint, Dkt. No. 1.) The Complaint was submitted by the Wilson Keadjian Browndorf LLP, signed by Lazo, identified as "Attorney for Relator JOHN DOE." (Id. at 41.)

On July 12, 2018, Lazo filed a First Amended Complaint ("FAC") also under seal, which listed Lazo as the Relator. (FAC, Dkt. No. 8.) On October 12, 2018, A Notice and Order of Election by the United States to decline intervention was filed with the court permitting Lazo to maintain this action in the name of the United States and to serve Defendants with the FAC. (Election, Dkt. No. 9; Response to Order to Show Cause, Dkt. No. 26 at 3.)

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On March 12, 2019, the Court granted the parties' joint stipulation permitting Lazo to amend the FAC, and Lazo filed the Second Amended Complaint ("SAC"). (Order, Dkt. No. 32.) On May 6, 2019, the Court granted the parties' joint stipulations to unseal the original complaint and to permit Lazo to file the TAC. (Order, Dkt. Nos. 52, 53.)

The TAC outlines the various government incentives created to aid small businesses in the construction industry that earn no more than $36.5 million on average annually (¶¶ 29-35), small disadvantaged businesses in which firms are at least 51% owned and controlled by socially and economically disadvantaged persons and obtain a Small Business Administration ("SBA") certification (¶¶ 36-37, 43-48.)

Lazo alleges that Defendants falsified and manipulated qualification criteria from federally-funded construction and development programs to gain certification under the Southern California Minority Supplier Development Council (the "Development Council") as a Minority Business Enterprise ("MBE") and as a Minority Owned Disadvantaged Small Business and to qualify as a Section 8(a) Small Business in the Business Development Program in violation of 31 U.S.C. § 3729. (TAC ¶ 1.) The TAC states that Defendants procured contract awards for hundreds of millions of dollars on the behalf of sham entities by "establish[ing] fake MBEs through individuals whose racial persuasions fit within the definition of a recognized ethnic minority, commissioning said individuals (who had no relevant construction experience) to act as token MBE members in order to nominally comply with the MBE certification requirements and obtain MBE certification" in violation of 31 U.S.C. § 3729(a)(1)(A). (Id. ¶¶ 1-2, 56-57.)

KSJ is alleged to be an example of a sham MBE, in which Alley, Harris, and Lombard formed the entity to gain MBE qualification and get federally-funded projects and public-works contracts by placing ownership under another individual. (Id. ¶¶ 58-59.) KSJ also partnered with VCC to obtain bond licensure and other benefits that KSJ could not otherwise obtain. (Id. ¶ 59.) Due to conflicts of interests, Lombard remained a silent partner in KSJ. (Id. ¶ 60.) Lazo lists examples of thirteen federally-funded projects that Defendants obtained split as follows: VCC (6), CMSI (2), KSJ (5). (Id. ¶ 64.)

The TAC states that Defendants engaged in a "sham subcontractor scheme," in which they would conceal the lowest legitimate bid for projects, then award the contract to a sham subcontractor, such as KSJ or Demo, at an inflated price. (Id. ¶¶ 50-51, 57-58.)[1] The project owner would be unaware that the project was being completed by a different subcontractor and pay the inflated price, after which Defendants would pay the subcontractor the lower, concealed rate and pocket the remainder of the government's money. (Id. ¶¶ 60.) Lazo alleges that VCC did so consistently, such that other subcontractors chose not to bid on their projects because they would always award it to its sham subcontractor, Diversified. (Id. ¶¶ 62-63.)

Lazo also alleges that Defendants engaged in a "pocket subcontractor kickback scheme," in which Defendants conspired with subcontractors including G.D. Heil, Inc.; Largo Concrete, Inc.; Sam Rammaha Painting Company, Inc.; John Jory Corp.; Taft Electric Company; and Southern California Grading Inc. to have them send inflated invoices to departments of the government in violation of 31 U.S.C. § 3729(a)(1)(A) and (a)(1)(C). (Id. ¶¶ 3, 52.) These pocket subcontractors performed various trades including pouring concrete foundation and structure, structural steel and precast concrete, framing, masonry, roofing, and electrical. (Id. ¶ 66.) Defendants asked the pocket subcontractors to submit two invoices, one for "labor" and another, which was a duplicative charge, for "materials" that were not purchased for those projects. (Id. ¶¶ 68-69, 90-99.) In exchange for the pocket subcontractors' participation, Defendants offered kickbacks or promises of future work. (Id. ¶ 76.) Defendants would also doctor the charges that the government had agreed to by having employees "tear out pages of project bid books, manipulate bid numbers by redacting the original pages, make photocopies of the doctored pages, and substitute them into the books for the original pages in order to misrepresent the terms of the initial deal to the project owners." (Id. ¶¶ 70-71.) In addition, Defendants created fictitious entities with similar names to legitimate subcontractors so that they could issue invoices to a recognized name. (Id. ¶ 72.) "Keeney was involved in orchestrating all of the payments, transferring the bids, and perpetrating the fraud against the [g]overnment throughout this scheme." (Id. ¶ 54.)

[1] The TAC paragraph numbering is off. After paragraph 64, the TAC returns again to paragraph 49. The Court cites the paragraphs in accordance with what is listed despite these numbers being repeated. Any citation beyond this point in the background section refers to the paragraphs on page 21 of the complaint and beyond.

Lazo additionally alleges that Defendants padded insurance costs of 1-2 percent of the project price, while actually charging the project owners 6.5 percent, while retaining the difference as profit. (Id. ¶¶ 81-82.) Defendants also retained their own offshore insurance company at a lower cost and conceal that cost to avoid passing the savings on to project owners. (Id. ¶ 85-86.) Lazo includes an "exemplar chart of the insurance credits, further negotiations, and doctored buyouts for projects named "A" to "G." (Id. ¶ 87.)

Further, Lazo states that Defendants abused California's tax increment financing ("TIF") method through its fraudulent schemes so that California was forced to pay Defendants tax credits for the inflated cost of their work. (Id. ¶¶ 100-103.)

With respect to the construction of the South Central Los Angeles Regional Center for Developmentally Disabled persons, Inc. ("SCLARC"), Lazo alleges that Defendant Harris used his inside relationships as a former board member of SCLARC to convince SCLARC's CEO to fire Tower Construction, LLC, the initial general contractor for the project, and replace it with KSJ, who then implemented the various schemes to defraud the government. (Id. ¶¶ 105-110.)

Lazo requests that the Court order that: (1) Defendants cease violating the FCA; (2) enter judgment against Defendants for trebled damages and civil penalties for each violation of the FCA; and (3) award Lazo the maximum statutory amount under the FCA, as well as attorneys fees and costs. (Id. at 40.)

II. LEGAL STANDARD

A. Subject Matter Jurisdiction: Fed. R. Civ. P. 12(b)(1)

Dismissal is proper when a plaintiff fails to properly plead subject matter jurisdiction in the complaint. Fed. R. Civ. P. 12(b)(1). A "jurisdictional attack may be facial or factual." Safe Air for Everyone v. Meyer, 373 F.3d 1035, 1039 (9th Cir. 2004). If the challenge is based solely upon the allegations in the complaint (a "facial attack"), the court generally presumes the allegations in the complaint are true. Id.; Warren v. Fox Family Worldwide, Inc., 328 F.3d 1136, 1139 (9th Cir. 2003). If instead the challenge disputes the truth of the allegations that would otherwise invoke federal jurisdiction, the

challenger has raised a "factual attack," and the court may review evidence beyond the confines of the complaint without assuming the truth of the plaintiff's allegations. Safe Air, 373 F.3d at 1039. The plaintiff bears the burden of establishing subject matter jurisdiction. Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377 (1994).

B. Motion to Dismiss: Fed. R. Civ. P. 12(b)(6)

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 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, but "[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. Nor must the Court "'accept as true a legal conclusion couched as a factual allegation.'" Id. at 678-80 (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.

C. Allegations of Fraud: Fed. R. Civ. P. 9(b)

Under Fed. R. Civ. P. 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) (emphasis in original) (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.

D. False Claims Act

Under the FCA, 31 U.S.C. § 3729, et seq., any person or entity who "knowingly presents . . . a false or fraudulent claim for payment" to the United States government is liable for civil penalties. 31 U.S.C. § 3729(a)(1)(A); United States ex rel. Biddle v. Bd. of Trs. of Leland Stanford, Jr. Univ., 161 F.3d 533, 535 (9th Cir. 1998). Under the FCA, "knowing" and "knowingly" "(A) mean that a person, with respect to information–(i) has actual knowledge of the information; (ii) acts in deliberate ignorance of the truth or falsity of the information; or (iii) acts in reckless disregard of the truth or falsity of the information; and (B) require no proof of specific intent to defraud." 31 U.S.C. § 3729(b)(1). "Congress enacted the [FCA] to 'enhance the Government's ability to recover losses sustained as a result of fraud against the Government.'" United States ex rel. Barajas v. Northrop Corp., 5 F.3d 407, 409 (9th Cir. 1993) (quoting S.Rep. No. 345, 99th Cong., 2d Sess. 1 (1986)). "The FCA allows private individuals, referred to as 'relators,' to bring suit on the Government's behalf against entities that have violated the Act's prohibitions." United States ex rel. Mateski v. Raytheon Co., 816 F.3d 565, 569 (9th Cir. 2016) (citing 31 U.S.C. § 3730(b)(1)). "Such suits are commonly called *qui tam* suits." Id. (citing Vt. Agency of Nat. Res. v. United States ex rel. Stevens, 529 U.S. 765, 768 (2000)).

Once a complaint has been filed for violations of the FCA, a "first-to-file bar" provides that "no person other than the Government may intervene or bring a related action based on the facts underlying the pending action." 31 U.S.C. § 3730(b)(5). The Ninth Circuit "treat[s] the first-to-file bar as jurisdictional." U.S. ex rel. Hartpence v. Kinetic Concepts, Inc., 792 F.3d 1121, 1130 (9th Cir. 2015); see U.S. ex rel. Lujan v. Hughes Aircraft Co., 243 F.3d 1181, 1186 (9th Cir. 2001)

(finding that "the district court had the power to decide *the § 3730(b)(5) jurisdictional challenge*") (emphasis added).

III. DISCUSSION

A. The Court's Subject Matter Jurisdiction

Defendants argue that the TAC must be dismissed because the first-to-file bar prevents Lazo from substituting himself in for original plaintiff, John Doe. (Mot., Dkt. No. 57-1 at 5.) Since Lazo identified himself as attorney for John Doe and John Doe did not indicate that he was proceeding pro se, Defendants suggest that Lazo could not have been the original plaintiff in the case absent misrepresentations to the Court and is therefore improperly intervening. (Id. at 6, n.3.) See U.S. ex rel. Manion v. St. Luke's Reg'l Med. Ctr., Ltd., No. CV 06-498-S-EJL, 2008 WL 906022, at *7 (D. Idaho Mar. 31, 2008) ("The statute not only prevents a person from bringing a 'related action' but also from intervening in any way."). Since courts have found that amending a complaint to name "persons other than the government" as plaintiffs is not permitted, Defendants contend that the court here must likewise dismiss the TAC. (Id. at 5–6.) See United States ex rel. Little v. Triumph Gear Sys., Inc., 870 F.3d 1242, 1245, 1252 (10th Cir. 2017), cert. denied sub nom. U.S. ex rel. Little v. Triumph Gear Sys., Inc., 138 S. Ct. 1298 (2018) (finding that attorney for original relator could not proceed as one of two sole relators through an amended complaint); United States ex rel. Doe v. Janssen Pharmaceutical N.V. et al., No. 16-06997, at 3 (C.D. Cal. Apr. 19, 2018), appeal docketed, No. 18-55643 (9th Cir. May 17, 2018) ("Jane Doe was a nonparty to the action because she was not named as a relator in the original complaint. She therefore had no power to file the amended complaint, and could not intervene because of the first-to-file rule.").

Lazo counters that he has been John Doe all along and that Defendants' contention that "Lazo is not the original Relator is based on nothing more than Defendants' conjectured disbelief of this fact." (Opp'n, Dkt. No. 61 at 1.) Lazo says that he proceeded as John Doe because "many of the subcontractors and vendors who are identified in the Complaint . . . understandably do not want to lose business relationships, and as such, [] Lazo feared that if his identity was revealed, Defendants would threaten these third parties with retaliatory measures if they dared communicate

with his office, or otherwise disclosed Defendants' tortious conduct." (Id. at 2–3.)[2] Lazo indicates that by the time he filed the FAC, the concerns of the subcontractors and vendors were "in large part alleviated, . . . and as such he disclosed his identity as the Relator." (Id. at 3.)

Defendants say that Lazo's explanation makes no sense because Lazo had already been identified as the attorney for John Doe on the original Complaint and the rationale for allowing Doe plaintiffs to proceed is when there is risk of harm to *that* plaintiff, not to *others*. (Reply, Dkt. No. 63 at 3.)

The Ninth Circuit "recognize[s] that the identity of the parties in any action, civil or criminal, should not be concealed except in an unusual case, where there is a need for the cloak of anonymity" in order "to protect a person from harassment, injury, ridicule or personal embarrassment." United States v. Doe, 655 F.2d 920, 922 (9th Cir. 1980). While Lazo's explanation for bringing the suit anonymously—to prevent the disclosure of his identity and thereby protect other subcontractors and vendors—is perplexing in light of the fact that he had already disclosed his identity as the attorney on the case, at most Defendants can only show is that Lazo's representations to the Court were somewhat misleading, not that he was definitely not John Doe. This case is thus distinct from others cited by Defendants in which the subsequent relator was definitely distinct from the original relator. See Little, 870 F.3d at 1245; Janssen, No. 16-06997 at 3. The Court denies the motion to dismiss for lack of subject matter jurisdiction on this basis.

B. Failure to State a Claim

"[T]o commit conduct actionable under the FCA, one must, in some way, falsely assert entitlement to obtain or retain government money or property." Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc., 637 F.3d 1047, 1056 (9th Cir. 2011). "[U]se of representative examples is simply one means of meeting the pleading obligation," but "it

[2] Defendants argue that the Court should not consider Lazo's Declaration filed with the opposition brief because "Defendants' jurisdictional challenge was based solely on Mr. Lazo's own filings, not any extrinsic evidence." (Reply, Dkt. No. 63 at 2.) Since a plaintiff would necessarily be denied any opportunity to explain an amended FCA pleading that reveals the identity of an original Doe plaintiff under Defendants' logic, the Court disagrees with Defendants and will consider Lazo's Declaration.

is sufficient to allege 'particular details of a scheme to submit false claims paired with reliable indicia that lead to a strong inference that claims were actually submitted.'" Ebeid ex rel. U.S. v. Lungwitz, 616 F.3d 993, 998–99 (9th Cir. 2010) (quoting United States ex rel. Grubbs v. Ravikumar Kanneganti, 565 F.3d 180, 190 (5th Cir. 2009)).

Defendants argue that the TAC also fails to state a claim under Fed. R. Civ. P. 12(b)(6) and 9(b) for allegations of fraud. (Mot., Dkt. No. 57 at 7.) While Defendant acknowledges that the TAC names thirteen projects and lists several allegedly fraudulent schemes, Defendants say that there is no connection alleged between the projects and schemes nor with payments to the federal government. (Reply, Dkt. No. 63 at 1.) In addition, Defendants state that Lazo "fail[s] to provide a single specific detail about the involvement of, or injury to, the federal government in any of these [] projects" such that the complaint does not include "the who, what, when, where, and how of the misconduct charged." Ebeid, 616 F.3d at 998. Defendants point out that certain facts discussed in the opposition brief, such as those regarding the "concrete and rebar" scheme were not pleaded in the TAC. (Opp'n, Dkt. No. 61 at 20; Reply, Dkt. No. 63 at 5.) The Court must ignore those new facts in deciding the pending motion to dismiss, although the Court can consider additional facts can be pleaded in determining whether to grant leave to amend. (Id.) See Schneider v. California Dep't of Corr., 151 F.3d 1194, 1197, n.1 (9th Cir. 1998).

Lazo partially disputes the standard required to state a claim under the FCA, emphasizing that the specific details of a single transaction are not required by the Ninth Circuit and arguing that the Rule 9(b) requirements are less stringently applied when "the alleged fraud is complex or occurred over a period of time." (Opp'n, Dkt. No. 61 at 5–6.)

The Court reviews each of the alleged schemes and agrees that Lazo has failed to meet the standards set forth in Fed. R. Civ. P. 9(b). Specifically, Lazo has not alleged the "who, what, when, where, and how" required for allegations of fraud, even under any relaxed standard that may apply.

1. Sham MBEs

Defendants argue that the TAC does not indicate "who fraudulently obtained an MBE certification, when, or from whom, or even what was allegedly false about the MBE certification." (Mot., Dkt. No. 57-1 at 11.) While Lazo indicates that the government has been defrauded, he generally does not specify a government agency, government construction project, government contract, or government employee involved. The TAC contains references to individuals involved in this scheme, such as Alley, Lombard, and Harris, allegations of a partnership between KSJ and VCC, and a list of federal projects obtained by Defendants. Lazo points to allegations that he deems sufficient to state a claim, such as the identification of the business entities (KSJ, Demo, CMSI, and Diversified), the prime contract and subcontracts for small disadvantaged businesses that was involved, and the process for creating the facades. (Opp'n, Dkt. No. 61 (citing Complaint[3] ¶¶ 2, 31.)

Yet, the TAC is noticeably lacking in allegations regarding when these projects and the alleged receipt and representation of fraudulently obtained certifications took place. While Lazo states in his opposition that the prime contract and subcontracts are identified, they are not listed in any paragraph of the Complaint or TAC cited. (Opp'n, Dkt. No. 61 at 14.) See Complaint ¶¶ 2, 31. As Defendants point out, "listing thirteen projects allegedly funded by the federal government does not establish any connection between the alleged false certification and the government's decision to pay." (Reply, Dkt .No. 63 at 8.) The allegations therefore provide insufficient notice to Defendants to meet the pleading requirements of Rule 9(b). See U.S. ex rel. Savage v. CH2M Hill Plateau Remediation Co., No. 4:14-CV-5002-EFS, 2015 WL 5794357, at *12–13 (E.D. Wash. Oct. 1, 2015) (finding allegations sufficient to state a claim when they identify "the business entities, the pertinent prime contract on which implied false certifications were based, the subcontracts on which express and implied false certifications were based, and the fraudulent scheme by which these business entitles created small, disadvantaged business facades" and insufficient when they fail to identify "the individual who certified the pertinent small, disadvantaged business status for a particular 'facade' subcontractor or received the payment that was paid as a result of the material false certification.").

[3] Lazo cites to the original complaint throughout, not the TAC, the operative complaint.

At oral argument, Lazo asserted that allegations regarding timing are not required to meet the Rule 9(b) standard for FCA claims. See United States v. United Healthcare Ins. Co., 848 F.3d 1161, 1180 (9th Cir. 2016) ("Because this standard 'does not require absolute particularity or a recital of the evidence,' a complaint need not allege 'a precise time frame,' 'describe in detail a single specific transaction' or identify the 'precise method' used to carry out the fraud.") (citations omitted). Yet, there is a difference between requiring a "*precise* time frame" and allowing a complaint to proceed that is utterly devoid of reference to *any* time frame during which the alleged conduct occurred. See id. (quoting Wool v. Tandem Computers Inc., 818 F.2d 1433, 1439 (9th Cir. 1987) ("Broad allegations that include no particularized supporting detail do not suffice, but 'statements of the time, place and nature of the alleged fraudulent activities are sufficient.'"). Since there is no statement of the time of the alleged fraudulent activities, the Court finds that the TAC does not meet the requirements of Rule 9(b).

To the extent that Lazo attempted to plead an express or implied false certification claim, Lazo apparently concedes that there is no materiality alleged, as the issue is not addressed in his opposition brief. (Mot., Dkt. No. 57-1 at 2.)

2. Sham and Pocket Subcontractor Schemes

Defendants argue that the allegations of the TAC are insufficient to state a claim with respect to the sham subcontractor scheme because Lazo does not allege which Defendants and employees created the fake bid documents with whom they were shared. (Mot., Dkt. No. 57-1 at 13.) In addition, Defendants say that no sham entities are identified, and there are no allegations about what was false about the invoices or who received them nor regarding dates or locations in which the conduct took place. (Id.)

Lazo counters that the Ninth Circuit does not require these allegations and that discovery will serve the purpose of providing this type of detail. (Opp'n, Dkt. No. 61 at 15.) Since Lazo identifies various pocket subcontractors and the manner in which the scheme was carried out, he contends that he sufficiently pleads fraud with respect to the sham subcontractor scheme. (Id. at 15–16.)

The Court finds that Lazo has met most, but not all, of the pleading requirements set forth in Rule 9(b) as to VCC, Diversified, Demo, KSJ, and Keeney because he has alleged the names of the sham entities and pocket subcontractors, except for the requirement that his allegations include some description regarding the timeline of the allegations. Accordingly, the Court allows Lazo leave to amend to address this deficiency. Since there are no allegations regarding the other Defendants, and Lazo conceded this point at oral argument, the TAC's allegations with respect to the sham and pocket subcontractor schemes as to them are insufficient to state a claim.

3. Insurance Scheme

Defendants argue that the allegations regarding the insurance scheme fail Rule 9(b)'s requirements because they do not include facts regarding the identity of any participating employee, which specific projects have accounting ledgers that were doctored, and there is nothing to support a strong inference that the scheme resulted in a claim to the government. (Mot., Dkt. No. 57-1 at 14.)

Lazo responds by pointing to "real numbers in an actualized schematic in the Complaint" as support for the specificity of his allegations. (Opp'n, Dkt. No. 61 at 16.) The "exemplar chart" referenced by Lazo contains a list of "subs" A-G, as well as the numbers regarding the extent to which there were excessive charges for insurance fraud. (TAC ¶ 87.)

While the numbers themselves are specific, the references to the "subs" are not. Since there are thirteen projects that Lazo references in the TAC, but only seven that Lazo includes in the "exemplar chart," the Court allows Lazo leave to amend the TAC to specify the "who," "what," and general "when" applicable to the exemplar chart or otherwise relevant to the insurance scheme allegations.

4. Change Order, Rebate, and TIF Fraud Schemes

With respect to the change order scheme, Defendants contend that "there is only a conclusory allegation of fraud" because the "TAC does not identify the pocket subcontractors, the cost plus contracts, or the lump sum contracts," nor "who directed the scheme" or "a single alleged fraudulent change order, who submitted it, or to whom."

(Mot., Dkt. No. 57-1 at 14.) Defendants' arguments related to the rebate and TIF fraud schemes follow the same reasoning. In response, Lazo argues that no more specificity than is currently pleaded is required. (Opp'n, Dkt. No. 61 at 16–17.)

Here, the Court agrees with Defendants that more specificity is required to state a claim because the TAC does not indicate which of the Defendants participated in the alleged conduct with respect to CMSI, Alley, and Davis, nor a general time frame in which the conduct would have occurred. While Lazo highlights certain isolated instances in the TAC in which he singles out particular defendants for their conduct, the TAC as a whole does not put each Defendant (specifically CMSI, Alley, and Davis) on notice of what claims are being leveled against them. (Opp'n, Dkt. No. 61 at 17–19.) Accordingly, the Court allows Lazo leave to amend the TAC to correct these deficiencies.

5. SCLARC Project

Defendants also state that any allegations regarding the SCLARC project do not state a FCA claim because the purported fraud is not alleged with particularity and "it is not clear how convincing a project owner to fire one general contractor and hire another is fraud, let alone how it results in any false claims to the government." (Mot., Dkt. No. 57-1 at 15.)

Lazo represents that he has since learned additional relevant facts regarding the SCLARC project, which the Court will allow Lazo to allege in an amended pleading. (Opp'n, Dkt. No. 20 at 61.)

IV. CONCLUSION

For the foregoing reasons, the Court **grants** the motion to dismiss for failure to state a claim. The Court allows Lazo twenty-one (21) days leave to amend to address the deficiencies identified herein, focusing particularly on the conduct of each of the defendants and the timeline of events required to meet the standard of Rule 9(b).

IT IS SO ORDERED.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

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