

THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
ex rel. CONRAD,

Plaintiff,

v.

23-CV-0438 JLS

ROCHESTER REGIONAL HEALTH and
UNITED MEMORIAL MEDICAL CENTER,

Defendant.

**UNITED STATES' MEMORANDUM OF LAW IN SUPPORT OF IT MOTION
TO INTERVENE AND TO DISMISS PURSUANT TO 31 U.S.C. § 3730(c)(2)(A)**

The United States moves to intervene and dismiss pursuant to 31 U.S.C. § 3730(c)(2)(A) of the False Claims Act (FCA). The United States has good cause to intervene and is entitled to dismissal of the FCA claims in Relator's Second Amended Complaint, ECF No. 34, under *United States ex rel. Polansky v. Executive Health Resources, Inc.*, 599 U.S. 419 (2023), and the applicable standard of Fed. R. Civ. P. 41(a).

BACKGROUND

A. FCA Overview

The FCA, 31 U.S.C. §§ 3729-3733, imposes civil penalties and treble damages on any person or entity that (1) "knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval," in violation of 31 U.S.C. § 3729(a)(1)(A), and (2) "knowingly makes, uses, or causes to be made or used, a false

record or statement material to a false or fraudulent claim,” in violation of § 3729(a)(1)(B). Civil suits to enforce the FCA may be brought either by the Attorney General, *id.* § 3730(a), or by a private person, known as a “relator,” who files suit “for the person and for the United States Government” in the name of the United States, *id.* § 3730(b)(1). The suit is called a *qui tam* action. *Id.*

After a period for investigation, the FCA requires the United States to notify the court whether it will intervene in the *qui tam* action or decline to take over the action. 31 U.S.C. § 3730(b)(4). Where the United States intervenes, the Government assumes “the primary responsibility for prosecuting the action” and is not bound by any act of the relator. *Id.* § 3730(c)(1). As the party with primary responsibility over the action, the United States may proceed with the action, settle the case over the relator’s objection, *id.* § 3730(c)(2)(B), or dismiss the case over the relator’s objection, *id.* § 3730(c)(2)(A). If the United States declines to intervene, “the person bringing the action shall have the right to conduct the action.” *Id.* § 3730(b)(4). But even after declining to intervene, the United States may still intervene “upon a showing of good cause,” 31 U.S.C. § 3730(3), in which case it then assumes primary responsibility for the action and assumes all of the same rights described above.

If a *qui tam* action results in a monetary recovery, the relator may seek a share of that recovery, but the United States is entitled to “the lion’s share.” *Polansky*, 599 U.S. at 425. This is because *qui tam* suits “are brought in the name of the Government,” and for an alleged injury “exclusively to the Government.” *Id.*

While the relator may well have an interest in a *qui tam* suit, “that interest must be extraordinary, however, to override the Government’s election, as the Government’s motion to dismiss a *qui tam* action ‘will satisfy Rule 41 in all but the most exceptional cases.’” *United States ex rel. Sargent v. McDonough*, No. 1:23-CV-00328-LEW, 2024 WL 809902, at *1 (D. Me. Feb. 26, 2024), quoting *Polansky*, 599 U.S. at 437.

B. Relator’s Allegations

On May 17, 2023, Relator filed a Complaint in the United States District Court for the Western District of New York. ECF No. 1. Relator alleged that the Defendants, Rochester Regional Health and United Memorial Medical Center, violated the FCA by failing to report adverse events to the Vaccine Adverse Event Reporting System (VAERS) while claiming money from the United States under the Centers for Disease Control and Prevention’s (CDC) Covid-19 Vaccination Program (the “Program”). Relator alleges that Defendants violated the FCA because Defendants agreed to mandatory reporting to VAERS as part of their provider agreement to administer the Program, knowingly failed to submit alleged reportable events to VAERS, and that this provision was a material condition of participation in the Program.

C. Procedural History

Relator filed this *qui tam* action on May 17, 2023. ECF No. 1. After investigating Relator’s allegations, the United States informed the Court, on February 29, 2024, of its decision to decline intervention and requested that the

Court unseal Relator's *qui tam* complaint. ECF No. 8. The Court ordered the seal lifted on that same day. ECF No. 9. Relator then commenced litigation on behalf of the United States.

After being served with the *qui tam* Complaint, Defendants moved to dismiss on May 28, 2024. ECF No. 21. On August 20, 2024, the parties appeared before the Court for argument on the Motion to Dismiss, and following argument the Court orally granted Defendants' Motion, but granted Relator leave to amend the complaint. ECF Nos. 29, 30.

Relator filed an Amended Complaint on November 1, 2024. ECF No. 34. Defendants moved to dismiss the Amended Complaint on December 20, 2024. ECF No. 37. Following oral argument on the Motion, the Court, on June 11, 2025, issued a Decision and Order granting in part and denying in part Defendants' Motion. ECF No. 54. "[T]he Court DENIE[D] the motion as to Relator's false claims count, solely as to the allegations raised in paragraph 91 (and any alike) involving patients who received COVID vaccines from RRH" ECF No. 54 at 37. The Court otherwise granted the Motion to Dismiss as the remaining substantive FCA allegations in the Amended Complaint.¹

Following the Court's Decision and Order, Defendants filed an Answer, ECF No. 59, and the parties have initiated discovery. Defendants recently served discovery demands on relevant federal agencies, including the Food and Drug

¹ The Court also denied the motion as to Relator's retaliation claim. The Relator's retaliation claim is not subject to the United States' intervention decision and as such is not relevant to the instant motion.

Administration (FDA) and CDC. The Government understands that Relator has yet to serve demands for discovery on Defendants or any third party.

ARGUMENT

A. The United States Has Good Cause to Intervene for the Purpose of Dismissal

The Supreme Court held in *Polansky* that if the United States wishes to dismiss a *qui tam* suit pursuant to § 3730(c)(2)(A), it must first intervene and become a party. *Polansky*, 599 U.S. at 430-31. The FCA provides that the United States may intervene in a *qui tam* suit after declining upon a showing of “good cause.” 31 U.S.C. § 3730(c)(3). In its decision that the Supreme Court affirmed “across the board,” the Third Circuit explained that “showing ‘good cause’ is neither a burdensome nor unfamiliar obligation,” but instead “a uniquely flexible and capacious concept, meaning simply a legally sufficient reason.” *United States ex rel. Polansky v. Executive Health Resources, Inc.*, 17 F.4th 376, 387 (3d Cir. 2021), *aff’d* 599 U.S. 419 (2023).

This flexible standard for evaluating “good cause” applies even at a later stage in a *qui tam* litigation. *Polansky*, 17 F.4th at 381-82 (noting that “the parties and the District Court invested considerable time and resources in the case.”). In ultimately upholding dismissal in *Polansky*, the Supreme Court recognized that “the Government’s interest in the suit is the same [at any stage] – and is the predominant one.” *Polansky*, 599 U.S. at 434. *Qui tam* suits are “brought in the name of the Government” and “the injury they assert is exclusively to the Government.” *Id.* at 424–25 (citing § 3730(b)(1)).

In this case, the United States has good cause to intervene because it seeks to dismiss Relator’s amended complaint. As the Third Circuit concluded in *Polansky*, the Government’s request to dismiss the suit “itself established good cause to intervene.” *Polansky*, 599 U.S. at 429 n.2; see *Brutus Trading, LLC v. Standard Chartered Bank*, No. 20-2578, 2023 WL 5344973, at *2 (2d Cir. Aug. 21, 2023) (government’s (c)(2)(A) motion amounted to a motion to intervene as well); *United States ex rel. Carver v. Physicians Pain Specialists of Alabama, P.C.*, 2023 WL 4853328, at *6 n.4 (11th Cir. July 31, 2023) (ruling that “the same grounds that support dismissal also provide good cause to intervene”).

B. Legal Standard for the United States’ Motion to Dismiss Relator’s FCA Claims

Once the United States intervenes in a *qui tam* action, the FCA authorizes it to dismiss such an action, even if the relator objects: “The Government may dismiss the action notwithstanding the objections of the person initiating the action if the person has been notified by the Government of the filing of the motion and the court has provided the person with an opportunity for a hearing on the motion.” 31 U.S.C. § 3730(c)(2)(A).

The Supreme Court’s decision in *Polansky* instructs that district courts should apply the standard of Rule 41(a) when evaluating a motion to dismiss under § 3730(c)(2)(A). 599 U.S. at 424 (“We . . . hold that in handling such a motion, district courts should apply the rule generally governing voluntary dismissal of suits: Federal Rule of Civil Procedure 41(a)”).

In cases with the posture seen here (where an answer has been filed and

discovery as commenced), a motion to dismiss under § 3730(c)(2)(A) “will satisfy Rule 41 in all but the most exceptional cases.” *Id.* at 37. In sum, regardless of the posture or timing of the Government’s intervention and dismissal decision, the standard applied and afforded remains quite deferential to the Government’s determination. Dismissal in such cases is still governed by Rule 41(a)(2), and it is warranted “on terms that the court considers proper.” The Supreme Court indicated that that standard would be met so long as the United States provides good grounds for thinking that the suit would not do what all *qui tam* actions are supposed to do: vindicate the Government’s interests. “Absent some extraordinary circumstances, that sort of showing is all that is needed for the Government to prevail on a [section 3730(c)(2)(A)] motion to dismiss.” *Polansky*, 599 U.S. at 438. At bottom, “the Government’s views are entitled to substantial deference,” and “a district court should think several times over before denying a motion to dismiss. If the Government offers a reasonable argument for why the burdens of continued litigation outweigh its benefits, the court should grant the motion . . . even if the relator presents a credible assessment to the contrary.” *Polansky*, 599 U.S. at 437, 437–38.

C. The United States Is Entitled to Dismiss Relator’s *Qui Tam* Action.

The purpose of a *qui tam* action is to “vindicate the Government’s interests.” *Polansky*, 599 U.S. at 438. Here, at this early stage of litigation, the Government’s interest in dismissing the Relator’s complaint is “entitled to substantial deference,” so long as it is “reasonable.” *Id.*

The Government investigated the Relator’s claims in her original and amended complaints, and it has again evaluated the allegations considering the Court’s June 11, 2025 Decision and Order granting in part and denying in part Defendants’ Motion to Dismiss, ECF No. 54. Having done so, the Government has determined that dismissal is warranted because the costs of continued litigation significantly outweigh any potential benefits of continued litigation.

The Government has determined that allowing this litigation to proceed would impose significant costs on and disruptions to the relevant agencies. Those burdens include the costs, time, and resources involved in responding to discovery demands, as well as time and effort involved in monitoring the litigation. *See Polansky*, 599 U.S. at 438 (citing “significant costs of future discovery in the suit” as “good grounds” for dismissal.”). In contrast, the number of potential false claims—if any—is small; indeed, significantly smaller than those initially alleged by Relator given that the Court limited the potential false claims “solely as to the allegations raised in paragraph 91 (and any alike) involving patients who received COVID vaccines from RRH” *See* ECF No. 54 at 37. Because “the burdens of continued litigation outweigh the benefits, the court should grant the motion,” *Polansky*, 599 U.S. at 438, and dismiss this action pursuant to 31 U.S.C. § 3730(c)(2)(A).

D. No In-Person Hearing is Necessary

An in-person hearing is not required and would not aid the Court in adjudicating the Government’s motion to dismiss. *Polansky* did not specify what procedures would satisfy the requirement of a hearing but did not require a hearing

in all matters. In evaluating how a district court should reconcile a relator's right to a hearing with the fact that the district court has no adjudicatory role under Rule 41(a), the Supreme Court suggested that a hearing might establish a constitutional floor, inquiring into any credible allegations that dismissal might "violate the relator's rights to due process or equal protection," but did not elaborate on what would constitute such a violation. *Polansky*, 599 U.S. at 436 n.4. Those types of constitutional concerns clearly are not present in this case. Accordingly, no hearing is required in this matter. *Id.*; see *Brutus Trading, LLC*, 2023 WL 5344973, at *3 (holding that no in-person hearing was required, explaining that "the district court met the hearing requirement by carefully considering the parties' written submissions").

CONCLUSION

For the foregoing reasons, the United States respectfully requests that, finding the United States had good cause to intervene, the case be dismissed pursuant to 31 U.S.C. § 3730(c)(2)(A).

Respectfully submitted,

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DATED: July 13, 2026
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