

United States District Court
Central District of California

UNITED STATES OF AMERICA, et al.,
ex rel. DR. KUO CHAO,

Plaintiffs,

v.

MEDTRONIC PLC, et al.,

Defendants.

Case № 2:17-cv-01903-ODW (SSx)

**ORDER DENYING DEFENDANTS'
MOTION TO DISMISS [106]**

I. INTRODUCTION

This is a case brought under the federal False Claims Act, 31 U.S.C. §§ 3729–3733. Defendants Medtronic PLC; Medtronic Vascular, Inc.; Covidien LP, and Covidien Sales LLC (collectively, “Medtronic”) move to dismiss Plaintiff-Relator Dr. Kuo Chao’s Third Amended Complaint. (Mot., ECF No. 106; Third Am. Compl. (“TAC”), ECF No. 102.) The Motion is fully briefed. (Opp’n, ECF No. 109; Reply, ECF No. 111.) After carefully considering the papers filed in connection with the Motion, the Court deemed the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; C.D. Cal. L.R. 7-15. For the following reasons, the Court **DENIES** Medtronic’s Motion.

II. FACTUAL BACKGROUND

For purposes of this Rule 12(b)(6) motion, the Court accepts Dr. Chao's well-pleaded allegations as true. *Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001).

Medtronic is the manufacturer of a medical device called the Pipeline, a flexible cylinder-shaped medical device that is surgically inserted at the site of a brain aneurysm to help treat the aneurysm and its associated symptoms. (TAC ¶¶ 29–40.) Doctors order Pipeline devices for their patients; Medtronic provides the devices to the hospitals where the doctors work; and the hospitals seek reimbursement for the Pipeline device from Medicare, Medicaid, and other government health care programs. (See TAC ¶¶ 45–46.) Dr. Chao alleges that these reimbursements are tainted with fraud because they are the result of a multifaceted kickback scheme in which Medtronic compensates doctors to induce them to order a greater number of Pipeline devices for their patients. (See TAC ¶ 9.)

The kickbacks Dr. Chao alleges take four forms. First, Dr. Chao alleges that Medtronic maintains a proctoring program through which it regularly overpays doctors for professional services. Through the proctoring program, Medtronic hires doctors with experience inserting Pipelines as proctors to teach other doctors how to perform the Pipeline procedure, in part by being present for and supervising the procedure when performed by the trainee doctor. These proctors are themselves doctors with their own practices, and the gravamen of Dr. Chao's accusation is that Medtronic systematically and habitually overpays its proctors for their proctoring services, which functions as a disguised kickback meant to incentivize the doctors to order more Pipelines for their own practices. (TAC ¶¶ 107–130.) As an example, Dr. Chao sets forth allegations regarding one Dr. Woodward, who took excessive payments for both himself and his companies in exchange not only for his proctoring and medical data analysis services but also as a disguised kickback for continuing to use a high volume of Pipeline devices in his own practice. (TAC ¶¶ 248–257.)

1 Second, Dr. Chao alleges that Medtronic acquired, at an inflated rate, companies
2 in which doctors with a high volume of Pipeline usage held ownership interests. The
3 result of these acquisitions was that the doctors received a substantial windfall which
4 significantly exceeded the fair market value of their ownership interests. These
5 windfalls, Dr. Chao argues, constitute a kickback that improperly induced these doctors
6 to perform more Pipeline procedures. (TAC ¶¶ 204–240.)

7 Third, Dr. Chao alleges that Medtronic maintained two data collection registries,
8 IntrePED and ASPIRe, that it also used to disguise kickback payments to its Pipeline-
9 using doctors. Medtronic asked doctors who performed Pipeline procedures to upload
10 a small amount of patient- and procedure-related data to these registries in exchange for
11 a substantial payment. This data was very easy for doctors to gather, and Medtronic
12 paid the doctors for this data in excess of both the fair market value of the data and the
13 value of the doctors' collection efforts. This excess, Dr. Chao alleges, constitutes a
14 kickback. (TAC ¶¶ 170–203.)

15 Fourth, Dr. Chao alleges that Medtronic distributed illegal kickbacks to doctors
16 and hospitals disguised as fellowships, grants, and research funds. Medtronic
17 distributed these funds based in part on the doctors' or hospitals' volume of Pipeline
18 usage. Thus, Dr. Chao alleges, these fellowships, grants, and research funds functioned
19 as improper direct compensation for using more Pipeline devices—the very definition
20 of a kickback. (TAC ¶¶ 241–262.)

21 III. PROCEDURAL BACKGROUND

22 Dr. Chao is a medical doctor with experience in the treatment of aneurysms and
23 is currently affiliated with the Kaiser Permanente Los Angeles Medical Center. (TAC
24 ¶ 17.) He became aware of Medtronic's business practices through his personal
25 experience as a doctor interacting with Medtronic personnel and proctors. (TAC ¶ 18.)
26 On March 9, 2017, believing Medtronic's business activity to constitute a violation of
27 the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b, and the associated government health
28 care program reimbursements to therefore constitute a fraud on the government, Dr.

1 Chao, as Plaintiff-Relator, filed a False Claims Act Complaint against Medtronic.
2 (Compl., ECF No. 1.) According to Dr. Chao, Medtronic charges the government
3 twelve to fifteen thousand dollars per Pipeline device and, as a result of Medtronic's
4 kickback scheme, millions of dollars in government health care claims have been tainted
5 with fraud. (TAC ¶¶ 7–9.) He sets forth a claim under the federal False Claims Act,
6 31 U.S.C. § 3729, and twenty-eight analogous state-law claims arising from various
7 state versions of the False Claims Act.

8 The case remained sealed for some time, and on May 28, 2020, the United States
9 provided notice that it and all state plaintiffs declined to intervene.¹ (Notice, ECF
10 No. 41.) On May 29, 2020, the Court entered an Order unsealing the case. (Order re:
11 Election, ECF No. 42.)

12 Shortly thereafter, the case was transferred to Judge Scarsi. On December 4,
13 2020, Dr. Chao filed a First Amended Complaint. (First Am. Compl. ("FAC"), ECF
14 No. 59.) Medtronic moved to dismiss, and on April 12, 2021, Judge Scarsi dismissed
15 all Dr. Chao's claims and provided leave to amend. (Order Mot. Dismiss FAC, ECF
16 No. 80.) Dr. Chao proceeded to file his Second Amended Complaint, (ECF No. 81),
17 and on May 21, 2021, the case was transferred to this Court, (ECF No. 91). On June 29,
18 2021, pursuant to the Court's order granting leave, Dr. Chao filed the now-operative
19 Third Amended Complaint.

20 On August 2, 2021, Medtronic moved to dismiss the TAC pursuant to Federal
21 Rule of Civil Procedure ("Rule") 12(b)(6), on the grounds that Dr. Chao failed to correct
22 the deficiencies that supported dismissal of the FAC and that he otherwise continues to
23 fail to state a claim. (Mot. 1–3.) At the same time Dr. Chao opposed, the United States
24 filed a Statement of Interest arguing that Dr. Chao states a claim for False Claims Act
25 violations and urging the Court to deny Medtronic's Motion. (Statement of Interest,
26 ECF No. 108.) After Medtronic replied and the Court took the matter under submission,

27 ¹ Pursuant to the Maryland False Claims Act, the effect of this Notice was to require dismissal of the
28 Maryland False Claims Act claim. Md. Code Ann., Health-Gen. § 2-604(a)(7); (*see* Order re: Election,
ECF No. 42 (dismissing Maryland False Claims Act claim without prejudice)).

1 Dr. Chao filed a Notice of Supplemental Authority. (ECF No. 113.) The Court invited
2 Medtronic’s response, (Min. Order, ECF No. 115), which Medtronic provided on
3 October 27, 2021, (Resp., ECF No. 117).

4 IV. LEGAL STANDARD

5 A court may dismiss a complaint under Rule 12(b)(6) for lack of a cognizable
6 legal theory or insufficient facts pleaded to support an otherwise cognizable legal
7 theory. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1988). A
8 complaint need only satisfy the minimal notice pleading requirements of Rule 8(a)(2)—
9 a short and plain statement of the claim—to survive a dismissal motion. *Porter v. Jones*,
10 319 F.3d 483, 494 (9th Cir. 2003). The factual “allegations must be enough to raise a
11 right to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544,
12 555 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (holding that a claim must be
13 “plausible on its face” to avoid dismissal).

14 The determination of whether a complaint satisfies the plausibility standard is a
15 “context-specific task that requires the reviewing court to draw on its judicial
16 experience and common sense.” *Iqbal*, 556 U.S. at 679. A court is generally limited to
17 the pleadings and must construe all “factual allegations set forth in the complaint . . . as
18 true and . . . in the light most favorable” to the plaintiff. *Lee*, 250 F.3d at 679. However,
19 a court need not blindly accept conclusory allegations, unwarranted deductions of fact,
20 and unreasonable inferences. *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988
21 (9th Cir. 2001). Ultimately, there must be sufficient factual allegations “to give fair
22 notice and to enable the opposing party to defend itself effectively,” and the “allegations
23 that are taken as true must plausibly suggest an entitlement to relief, such that it is not
24 unfair to require the opposing party to be subjected to the expense of discovery and
25 continued litigation.” *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011).

26 V. DISCUSSION

27 As a preliminary matter, the government’s decision not to intervene has no
28 relevance to the resolution of this Motion. This is because “[i]n any given case, the

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