

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA and
the STATE OF NEW YORK *ex rel.*
MADELYN B. BARNES,

Plaintiffs,

1:16-CV-00088 (JLS-HKS)

v.

HEALTHNOW NEW YORK, BLUECROSS
BLUESHIELD OF WESTERN NEW YORK
BLUESHIELD OF NORTHEASTERN NEW
YORK,

Defendant.

**UNITED STATES' RESPONSE IN OPPOSITION TO
DEFENDANT'S MOTION FOR JUDGMENT ON THE
PLEADINGS BASED ON ALLEGED UNCONSTITUTIONALITY
OF THE *QUI TAM* PROVISIONS OF THE FALSE CLAIMS ACT**

In accordance with the contemporaneously filed Notice of Intervention under 28 U.S.C. § 2403(a) for the limited purpose of defending the constitutionality of the *qui tam* provisions of the False Claims Act (FCA), 31 U.S.C. § 3729 *et seq.*, the United States of America submits this brief in opposition to the Motion for Judgment on the Pleadings by Defendant HealthNow New York Inc., d/b/a BlueCross BlueShield of Western New York, and d/b/a BlueShield of Northeastern New York, relating to the constitutionality of the FCA's *qui tam* provisions (the "Motion"). *See* ECF No. 171-2.

ARGUMENT

Defendant argues that Relator’s litigation of this declined *qui tam* case violates the Appointments Clause, Take Care Clause, and Vesting Clause of Article II of the U.S. Constitution. Every court of appeals to have addressed the question has held that the FCA’s *qui tam* provisions are consistent with Article II. See *United States ex rel. Stone v. Rockwell Int’l Corp.*, 282 F.3d 787, 804–807 (10th Cir. 2002); *Riley v. St. Luke’s Episcopal Hosp.*, 252 F.3d 749, 753–58 (5th Cir. 2001) (en banc); *United States ex rel. Taxpayers Against Fraud v. General Elec. Co.*, 41 F.3d 1032, 1040–42 (6th Cir. 1994); *United States ex rel. Kelly v. Boeing Co.*, 9 F.3d 743, 749–59 (9th Cir. 1993); see also *United States ex rel. Kreindler & Kreindler v. United Techs. Corp.*, 985 F.2d 1148, 1155 (2d Cir. 1993) (explaining, in rejecting an Article III challenge, that the *qui tam* “provisions do not usurp the executive branch’s litigating function”).

Almost all district courts have followed suit. See, e.g., *United States ex rel. Butler v. Shikara*, No. 20-80483-CV, 2024 WL 4354807, at *11–13 (S.D. Fla. Sept. 6, 2024); *United States ex rel. Resolution NJ LLC v. Riverside Medical Group, P.C.*, No. 2:22-cv-4165, 2024 WL 4100372, at *5 (D.N.J. Sept. 6, 2024); *United States ex rel. CLJ, LLC v. Halickman*, No. 20-CV-80645, 2024 WL 3332055, at *21 n.5 (S.D. Fla. June 14, 2024); *United States ex rel. Wallace v. Exactech, Inc.*, No. 7:18-cv-01010-LSC, 2023 WL 8027309, at *4 (N.D. Ala. Nov. 20, 2023); *United States ex rel. Thomas v. Mercy Care et al.*, 2023 WL 7413669 (D. Ariz., Nov. 9, 2023); *United States ex rel. Miller v. Manpow*, 2023 WL 8290402 (C.D. Cal. Aug. 30, 2023); *United*

States v. Halifax Hosp. Med. Ctr., 997 F. Supp. 2d 1272, 1278 (M.D. Fla. 2014); *United States ex rel. Butler v. Magellan Health Servs., Inc.*, 74 F. Supp. 2d 1201, 1212 (M.D. Fla. 1999); *but see United States ex rel. Zafirov v. Fla. Med. Assocs., LLC*, No. 8:19-CV-01236-KKM-SPF, 2024 WL 4349242 (M.D. Fla. Sept. 30, 2024).¹

This Court likewise should reject Defendant’s arguments that the *qui tam* provisions of the FCA are unconstitutional.

I. The FCA’s *Qui Tam* Provisions Do Not Violate The Take Care Or Vesting Clauses

Under the Take Care Clause, the President “shall take Care that the laws be faithfully executed,” U.S. Const. art. II, § 3, and the Vesting Clause states that “[t]he executive power shall be vested in a President of the United States.” *Id.* The FCA’s *qui tam* provisions are consistent with those Clauses.

Since the Founding, *qui tam* provisions like the ones in the FCA have been understood to be consistent with the Constitution. When Congress enacted the FCA in 1863, it included *qui tam* provisions following a “long tradition of [such] actions in England and the American Colonies.” *Vermont Agency of Nat. Res. v. United States ex rel. Stevens*, 529 U.S. 765, 774 (2000) (*Stevens*). The essence of the *qui tam* mechanism is that a private party may bring suit because of a wrong done to the sovereign and is entitled to a share of the recovery if the action is successful. The deep historical roots of *qui tam* provisions demonstrate that the FCA does not violate the Constitution. As the Supreme Court observed, “[s]tatutes providing for

¹ An appeal in *Zafirov* is pending before the Eleventh Circuit (No. 24-13581).

actions by a common informer, who himself had no interest whatever in the controversy other than that given by statute, have been in existence for hundreds of years in England, and in this country ever since the foundation of our [G]overnment.” *United States ex rel. Marcus v. Hess*, 317 U.S. 537, 541 n.4 (1943) (quoting *Marvin v. Trout*, 199 U.S. 212, 225 (1905)).

Qui tam statutes were among the first pieces of legislation enacted in our Nation’s history. The First Congress passed, and President George Washington signed, a “considerable number” of such statutes, *see Stevens*, 529 U.S. at 776–77 & nn.5–7, and subsequent early Congresses and Presidents did the same. *See* Act of Feb. 20, 1792, ch. 7, § 25, 1 Stat. 232, 239 (2d Cong.; Post Office); Act of Mar. 1, 1793, ch. 19, § 12, 1 Stat. 329, 331 (2d Cong.; trading with Indians); Act of Mar. 22, 1794, ch. 11, §§ 1–2, 4, 1 Stat. 347, 349 (3d Cong.; international slave trade); Act of May 19, 1796, ch. 30, § 18, 1 Stat. 469, 474 (4th Cong.; trading with Indians); Act of Apr. 2, 1802, ch. 13, § 18, 2 Stat. 139, 145 (7th Cong.; trading with Indians); Act of Apr. 29, 1802, ch. 36, §§ 3–4, 2 Stat. 171, 172 (7th Cong.; copyright); Act of May 3, 1802, ch. 48, § 4, 2 stat. 189, 191 (7th Cong.; mail carriers); Act of Mar. 26, 1804, ch. 38, § 10, 2 Stat. 283, 286 (8th Cong.; La. slave trade); Act of Mar. 2, 1807, ch. 22, § 3, 2 stat. 426 (9th Cong.; slave trade). The Second Congress also enacted a law providing generally for the award of costs in *qui tam* cases, Act of May 8, 1792, ch. 36, § 5, 1 Stat. 277–78, suggesting that the *qui tam* mechanism was a well-established feature of federal law.

“These early congressional enactments ‘provid[e] contemporaneous and weighty evidence of the Constitution’s meaning.” *Haaland v. Brackeen*, 143 S. Ct. 1609, 1637 (2023) (quoting *Bowsher v. Synar*, 478 U.S. 714, 723 (1986)); *see also Consumer Fin. Prot. Bureau v. Cmty. Fin. Servs. Ass’n*, No. 22-448, 610 U.S. 416, 432 (2024). Indeed, the enactment of *qui tam* statutes immediately after the Founding clearly indicates that the Framers viewed them as fully compliant with Article II of the Constitution. And the long tradition of *qui tam* actions in the United States after the Framing provides “additional evidence that the doctrine of separated powers does not prohibit” this unique practice, given that “‘traditional ways of conducting government . . . give meaning’ to the Constitution.” *Mistretta*, 488 U.S. at 401 (quoting *Youngstown Sheet & Tube*, 343 U.S. at 610 (Frankfurter, J., concurring)); *see also NLRB*, 517 U.S. at 514.

For example, the Slave Trade Act of 1794 (“1794 Act”), passed by the Third Congress and signed by President Washington, is directly analogous to the *qui tam* provisions of the FCA. It authorized a bounty for private citizens who sued those engaged in the international slave trade. Slave Trade Act of 1794, ch. 11, §§ 1–2, 4, 1 Stat. 347, 349. The 1794 Act prohibited the modification of vessels in United States ports for the purpose of transporting enslaved people. As amended in 1800, the Act imposed the following penalties: (1) forfeiture of the vessel, (2) a fine of \$2,000, to be divided equally between the United States and the informer, and (3) for every enslaved person carried, an additional fine of \$200, also to be divided equally between the United States and the informer. *See id.* at §§ 2, 4. Thus, the

1794 Act provided informers who had no independent injury with “both a bounty and an express cause of action,” *see Stevens*, 529 U.S. at 776–77, just like the modern FCA’s *qui tam* provisions.

Copyright laws are another line of *qui tam* cases from the early to mid-19th century that provide strong evidence of the constitutionality of the *qui tam* provisions in the FCA. These cases involved private plaintiffs suing for copyright violations. As the Court noted in *Stevens*, 529 U.S. at 776 n.5, the Act of May 31, 1790, ch. 15, 1 Stat. 124–25, § 2, allowed an author or proprietor to sue for and receive half of the penalty for a violation of copyright, *see Clayton v. Stone*, 5 F. Cas. 999 (C.C.S.D.N.Y. 1829). Similarly, *qui tam* actions arose under subsequent copyright statutes, normally brought by an aggrieved party, though not necessarily so. *See Blunt v. Patten*, 3 F. Cas. 762 (C.C.S.D.N.Y. 1828); *Dwight v. Appleton*, 8 F. Cas. 183 (C.C.S.D.N.Y. 1843); *Reed v. Carusi*, 20 F. Cas. 431 (C.C.D. Md. 1845); *Ferrett v. Atwill*, 8 F. Cas. 1161 (C.C.S.D.N.Y. 1846); *Backus v. Gould*, 48 U.S. 798 (1849); *Stevens v. Gladding*, 60 U.S. 64 (1856).

Early *qui tam* enforcement also can be observed in many other areas of the law—a fact that is unsurprising given that the *qui tam* device was construed to allow “[a]lmost every fine or forfeiture,” *Adams*, 6 U.S. (2 Cranch) at 341, to be recovered by a *qui tam* action. *See, e.g., Ketland, qui tam v. The Cassius*, 2 U.S. (2 Dall.) 365, C.C.D. Pa. (1796) (*qui tam* action alleging that French ship had been illegally fitted out for war); *The Emulous*, 8 F. Cas. 697 (D. Mass. 1813) (No. 4,479), *revised sub nom., Brown v. United States*, 12 U.S. (8 Cranch) 110 (1814) (seizure of

private property belonging to citizens of an enemy nation); *Davison v. Champlin*, 7 Conn. 244, 244 (1828) (suit “in [the plaintiff’s] own name and in behalf of the United States” to recover a penalty for a statutory violation, though the suit was dismissed because it was filed in state rather than federal court); *Stearns v. United States*, 22 F. Cas. 1188 (C.C.D. Vt. 1835) (*qui tam* action arguing that defendant should be forced to pay debt to the federal government); *Nichols v. Newell*, 18 F. Cas. 199 (C.C.D. Mass. 1853) (successful *qui tam* action for patent violation); *Wolverton v. Lacey*, 30 F. Cas. 417, 417–18 (N.D. Ohio 1856) (successful *qui tam* action against the owner of a vessel for employing a crew, “none of whom had signed shipping articles of agreement”). These additional examples of actions in which informers, regardless of whether they were injured, pursued a bounty for a harm done to the United States, closely resemble *qui tam* actions under the modern FCA.

Thus, *qui tam* suits were not novel when Congress enacted the FCA in 1863. *See* Act of Mar. 2, 1863, Ch. 67, 12 Stat. 696 (1863). The FCA was originally designed to “stop[] the massive frauds perpetrated by large contractors during the Civil War.” *United States v. Bornstein*, 423 U.S. 303, 309 (1976). It authorized *qui tam* suits to “be brought and carried on by any person, as well for himself as for the United States,” and provided that such an action “shall be at the sole cost and charge of such person, and shall be in the name of the United States.” Act of March 2, 1863, § 4, 12 Stat. at 698 (1863). The contemporary version of the FCA retains the basic structure of the *qui tam* mechanism. Under the current statute, the Attorney General may bring a civil action to recover treble damages and civil

penalties for a violation of the FCA. *See* 31 U.S.C. § 3730(a). Alternatively, a private person known as a “relator” may bring suit “for the person and for the United States Government.” *Id.* § 3730(b)(1). The government then has 60 days, subject to extension, to decide whether to intervene and take over the suit. *Id.* § 3730(b)(2), (3). If the United States declines to intervene, “the person bringing the action [*i.e.*, the relator] shall have the right to conduct the action.” *Id.* § 3730(b)(4)(B).

In *Stevens*, the Supreme Court relied heavily on the deep historical roots of *qui tam* provisions and found this evidence “well nigh conclusive” in establishing that the FCA is consistent with Article III. 529 U.S. at 774–77. That same history is conclusive in establishing that the FCA is consistent with Article II. *See, e.g., Fin. Oversight & Mgmt. Bd. for Puerto Rico v. Aurelius Inv., LLC*, 590 U.S. 448, 458-459 (2020) (examining history bearing on Appointments Clause issue); *Zivotofsky ex rel. Zivotofsky v. Kerry*, 576 U.S. 1, 23 (2015) (“In separation-of-powers cases this Court has often ‘put significant weight upon historical practice.’”). Indeed, the Justices who addressed the Article II issue in *Stevens* found the history equally dispositive of that issue, as did the *en banc* Fifth Circuit. *See Stevens*, 529 U.S. at 801 (Stevens, J., joined by Souter, J., dissenting) (history was “sufficient to resolve” any question whether the *qui tam* provisions were consistent with Article II); *Riley*, 252 F.3d at 752 (finding it “logically inescapable that the same history that was conclusive on the Article III question in *Stevens* ... is similarly conclusive with respect to the Article II question”); *see also Butler*, 2024 WL 4354807, at *11 (“[D]ecades—nay, centuries—of litigation through the use of the *qui tam* device

under the FCA undercuts [defendant’s] argument” against constitutionality of FCA’s *qui tam* provisions).

The history shows that *qui tam* provisions are consistent with the original understanding of Article II, and the burden lies with Defendant to show that the FCA’s *qui tam* provisions fall outside that historical tradition. Defendant cannot meet that burden. To the contrary, the FCA provides the Executive even greater control over *qui tam* actions than the Act’s historical precursors. The constitutionality of the FCA thus follows *a fortiori* from the constitutionality of those precursors.

From the outset, every *qui tam* complaint under the FCA must be filed under seal and served on the government to ensure that the United States can investigate the matter and determine whether it wishes to “intervene and proceed with the action” or potentially move to dismiss it. 31 U.S.C. §§ 3730(b)(2); (c)(2)(A). Even if the government initially declines to intervene, it may still intervene at a later time for good cause. *See Polansky*, 143 S. Ct. at 1732, 1734; 31 U.S.C. § 3730(c)(2)(D)(3). In addition, the government may move to dismiss an FCA action over a relator’s objection. *Id.* § 3730(c)(2)(A).² Such motions are subject to highly deferential review under Federal Rule of Civil Procedure 41(a); indeed, the Supreme Court emphasized that district courts must grant dismissal “in all but the most exceptional cases . . . even if the relator presents a credible assessment to the

² *See, e.g., United States ex rel. Stovall v. Webster Univ.*, No. 3:15-cv-03530, 2018 WL 3756888 (D.S.C. Aug. 18, 2018) (on Government’s motion, dismissal of *qui tam* action over relator’s objection).

contrary.” *Polansky*, 143 S. Ct. at 1734. The government may also settle a pending suit over the objections of the relator, *see* 31 U.S.C. § 3730(c)(2)(B); and veto a relator’s proposed settlement or voluntary dismissal of his action, *id.* § 3730(b)(1).³ Further, after declining to intervene, the United States is entitled to receive copies of all pleadings and transcripts, *id.* § 3730(c)(3), and to stay any discovery by the relator that “would interfere with the Government’s investigation or prosecution of a criminal or civil matter arising out of the same facts,” *id.* § 3730(c)(4).

Notably, early *qui tam* statutes had far fewer controls over relators than the modern FCA. For example, in a case involving a customs inspector who was indicted for violating the 1790 customs act by an informer suing in the name of the United States, the Washington Administration determined that, while it could pardon the customs inspector, it had no power to nullify the informer’s award. *See* Baronia, Nitisha and Lucky, Jared and Zambrano, Diego, *Private Enforcement at the Founding and Article II* (May 8, 2024) (manuscript at 37), available at <https://ssrn.com/abstract=4821934>. In contrast, under the FCA, the Executive Branch can dismiss a *qui tam* action completely, quashing any right relator has to a recovery. The additional control mechanisms that Congress included in the FCA reflect that Congress—rather than merely accepting the *qui tam* device as an unexamined relic—made a conscientious effort to strike an appropriate balance

³ *See United States ex rel. Michaels v. Agape Senior Community, Inc.*, 848 F.3d 330, 339 (4th Cir. 2017) (“We agree with the district court, and with the Fifth and Sixth Circuits, that the Attorney General possesses an absolute veto power over voluntary settlements in FCA *qui tam* actions.”).

between incentivizing relators to come forward and respecting the Executive's primary role of enforcement through the Justice Department's controls. And if early *qui tam* statutes, which lacked such controls, were understood to pose no Article II problem, then the FCA's *qui tam* provisions cannot be understood to pose any Article II problem either.

For these reasons, the FCA's *qui tam* provisions are consistent with the Take Care Clause and the Vesting Clause, and Defendant's arguments to the contrary should be rejected.⁴

II. The FCA's *Qui Tam* Provisions Do Not Violate The Appointments Clause

Defendant argues that the FCA's *qui tam* provisions are inconsistent with the Appointments Clause, which specifies the permissible means of appointing "Officers of the United States" to public offices "established by Law." U.S. Const. art. II, § 2, cl. 2. That argument fails for the same reason as above. The history of *qui tam* provisions, dating to the Founding, forecloses the contention that the FCA's *qui tam* provisions violate the Appointments Clause.

⁴ The constitutional question presented at this juncture is only whether subjecting Defendant to suit at Relator's behest is consistent with Article II. Any consideration of whether the statutory limits on the government's settlement and dismissal authorities could create an Article II problem would be premature because the government has not sought to exercise those authorities in this case. Further, should the Court conclude that the FCA improperly constrains the government from exercising those authorities, the appropriate remedy would be to declare those limits unconstitutional, not to invalidate the FCA's *qui tam* provisions in their entirety.

Moreover, for a position to be a federal office, and thus subject to the Appointments Clause, it must be “continuing,” which “embraces the ideas of tenure, duration, emolument, and duties.” *United States v. Germaine*, 99 U.S. 508, 511 (1878). A hallmark of an office is that its “duties continue, though the person” occupying it “be changed.” *United States v. Maurice*, 26 F. Cas. 1211, 1214 (C.C.D. Va. 1823) (No. 15,747) (Marshall, C.J.); *See Officers of the United States Within the Meaning of the Appointments Clause*, 31 Op. O.L.C. 73, 111 (2007) (a key consideration for whether an office qualifies as continuing is that “the position’s existence should not be personal.”). But relators do not “occupy a continuing position established by law,” as would be required for them to be considered officers of the United States. *Lucia v. Sec. & Exch. Comm’n*, 585 U.S. 237, 237–38 (2018) (internal quotation omitted).

The Supreme Court has long applied this understanding of a continuing position. In *Germaine*, for example, the Court held that civil surgeons appointed to examine pensioners and applicants for pensions were not officers because their “duties are *not* continuing and permanent, and they *are* occasional and intermittent.” 99 U.S. at 512. As the Court explained, “[t]he surgeon is only to act . . . in some special case, as when some pensioner or claimant of a pension presents himself for examination. He may make fifty of these examinations in a year, or none.” *Id.* In *Auffmordt v. Hedden*, the Court, relying on *Germaine*, held that a merchant appraiser selected to reappraise goods pursuant to a customs statute likewise did not hold an office:

The merchant appraiser is an expert. . . . He is selected for the special case. He has no general functions, nor any employment which has any duration as to time, or which extends over any case further than as he is selected to act in that particular case. . . . His position is without tenure, duration, continuing emolument, or continuous duties, and he acts only occasionally and temporarily. Therefore, he is not an ‘officer,’ within the meaning of the [Appointments Clause].

137 U.S. 310, 326–27 (1890); *see also Sheboygan Cnty. v. Parker*, 70 U.S. 93, 96 (1865) (certain persons appointed by legislature were not “county officers” because “they do not exercise “continuously, and as a part of the regular and permanent administration of the government, any important public powers, trusts, or duties” (quoting *State ex rel. Atty. Gen. v. Kennon*, 7 Ohio St. 546, 562–63 (1857)); *cf. United States v. Hartwell*, 73 U.S. 385, 392–93 (1867) (holding that a “clerk in the office of the assistant treasurer of the United States” was an officer because his “duties were continuing and permanent, not occasional or temporary” and “[v]acating the office of his superior would not have affected the tenure of his place”).

Citing to Supreme Court decisions concerning a special prosecutor, *United States v. Donziger*, 38 F.4th 290, 296–99 (2d Cir. 2022), *cert. denied*, 143 S. Ct. 868 (2023), independent counsel, *Morrison v. Olson*, 487 U.S. 654, 671 n.12 (1988), and a bank receiver, *United States v. Weitzel*, 246 U.S. 533, 541 (1918), Defendant asserts that relators may occupy a continuing position. Those cases, however, do not support that a relator under the FCA occupies a “continuing” position. That is because the bank receiverships and the role of the special prosecutor in *Donziger*, like that of the independent counsel in *Morrison*, were continuing in the crucial sense that the roles were not specific to the individuals appointed to perform them:

the “duties” of those offices would “continue” even “though the person” performing them “be changed.” *Maurice*, 26 F. Cas. at 1214. That is not true of a relator’s role.

The duties of a bank receiver, for example, were not limited to performance by a single individual. *See Officers of the United States Within the Meaning of the Appointments Clause*, 31 Op. O.L.C. at 111. If a given person appointed to act as a receiver became unable to perform his duties, that would not negate the need for a receivership; it would simply require the appointment of another receiver in place of the first. In *Stanton v. Wilkeson*, 22 F. Cas. 1074 (S.D.N.Y. 1876), another bank-receiver case, then-Judge Blatchford made this point clear when he explained that “[v]acation of office by the comptroller” of the currency, who delegated authority to the receiver, would not “vacate the receivership.” 22 F. Cas. at 1074–75. (Judge Blatchford later became Justice Blatchford and authored the seminal opinion in *Auffmordt*.)

The same was true of the offices of the independent counsel in *Morrison* and the special prosecutors in *Donziger*. As the Supreme Court explained, Alexia Morrison was not even the first person to hold her office: The court that appointed her had initially appointed James McKay, who had resigned and been replaced by her. *Morrison*, 487 U.S. at 667. Ms. Morrison’s role was thus clearly “continuing” even though it was not permanent. And in *Donziger*, the Second Circuit—citing *Maurice*—specifically based its ruling on the premise that “the individuals appointed as special prosecutors could be replaced without the duties of the positions terminating.” 38 F.4th at 297. The role of a relator is nothing like that. If

a particular relator who has blown the whistle on a fraud by filing a *qui tam* action decides she is no longer interested in pursuing the action, another person cannot simply take her place as relator. The FCA states expressly that “[w]hen a person brings an action under” the *qui tam* provisions, “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).

Although a relator’s *qui tam* action survives her death and may be pursued by her estate’s personal representative, *United States v. NEC Corp.*, 11 F.3d 136, 139 (11th Cir. 1993), this only underscore that a relator’s interest in a *qui tam* action is simply an interest in her assigned share of the ultimate monetary recovery. The duties of an actual government office—for example, “an Attorney General, an Ambassador, or [a] Secretary of the Treasury,” *Zafirov*, 2024 WL 4349242 at *11—cannot be assigned and are not inherited by the official’s estate if she dies nor can the official reassign her duties to, say, a trusted friend.

Because *qui tam* relators do not occupy a continuing position, they are not officers of the United States, and therefore, the FCA *qui tam* provisions do not violate the Appointments Clause.

CONCLUSION

As set forth above, the FCA’s *qui tam* provisions are consistent with the Constitution. The Court should reject Defendant’s arguments—as every federal Circuit Court to address these issues has done—and deny Defendant’s motion based alleged unconstitutionality of the *qui tam* provisions of the FCA.

Respectfully submitted,

YAAKOV M. ROTH
Acting Assistant Attorney General

MICHAEL DIGIACOMO
United States Attorney

DATED: April 7, 2025
AT: Buffalo, New York

s/ David M. Coriell
DAVID M. CORIELL
Assistant United States Attorney
Western District of New York
138 Delaware Avenue
Buffalo, New York 14202
Tel: 716-843-5731
David.Coriell@usdoj.gov

JAMIE A. YAVELBERG
EDWARD C. CROOKE
JENNIFER KOH
Attorneys, Civil Division
Department of Justice
175 N Street, NE, 9th Floor
Washington, DC 20002
Tel: (202) 305-1816
Jennifer.Koh@usdoj.gov