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11
12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
14

15 UNITED STATES OF AMERICA,

16 Plaintiff,

17 ex rel. RELATOR LLC, a California
Limited Liability Company,

18 Relator.

19 v.
20

21 MAURICIO UMANSKY, an individual,
WILLIAM ROSE, an individual; THE
22 AGENCY HOLDCO, INC., a Delaware
corporation; and DOES 1-10,

23 Defendants.
24

Case No. 2:23-cv-05625-SB-PD

**MOTION TO DISMISS
COMPLAINT AND
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

Hearing Date: December 6, 2024
Time: 8:30 a.m.
Courtroom: 6C

Assigned to the
Hon. Stanley Blumenfeld, Jr.

Action Filed: July 12, 2023

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19 *United States ex rel. Mateski v. Raytheon Co.*,
 20 816 F.3d 565 (9th Cir. 2016) 15, 18, 19

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 26 No. 5:22-cv-01004, 2024 WL 3892980 (C.D. Cal. July 11, 2024)..... 10, 12, 13

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 28 No. 5:22-cv-01004-RGK-DTB, 2024 WL 4197344
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2 739 F. Supp. 2d 396 (S.D.N.Y. 2010) 17

3 *United States v. Bd. of Trs. of Leland Stanford, Jr. Univ.,*
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I. INTRODUCTION

1
2 Relator LLC (“Relator”) is a third party corporation formed by lawyers for a
3 single purpose: to “whistle blow” against entities and profit from *qui tam* actions
4 against businesses to which it has no actual relationship by means of the False
5 Claims Act (“FCA”). Now, Relator singles out the real estate brokerage company
6 The Agency Holdco, Inc. (“The Agency”), and two of its owners, Mauricio
7 Umansky and William Rose (collectively, “Defendants”). Relator makes the
8 specious claim that Defendants falsified information and certifications on its
9 applications for Paycheck Protection Program (“PPP”) loans in 2020 and 2021
10 through the use of guesswork, speculation, and contrived facts. The fact that
11 Relator’s Complaint is an artificial account of facts comes as no surprise. Relator is
12 in no way connected to Defendants: Relator was not previously employed by
13 Defendants nor is it otherwise affiliated with Defendants. Relator therefore cannot
14 ascertain or know firsthand the facts surrounding The Agency’s application for PPP
15 loans in the shadow of the COVID-19 global pandemic.

16 The Complaint is, line-by-line, a series of assertions premised on speculation
17 about The Agency’s financial position, employee headcount, employee salaries, and
18 liquidity. Based on publicly-available gross sales figures and PPP loan information,
19 Relator makes conclusory statements about The Agency’s financial position that are
20 illogical and unfounded. Relator improperly equates gross sales figures with profits
21 and liquidity, speculates about what percentage of real estate sales The Agency
22 would have received, and—without any information whatsoever—asserts that The
23 Agency falsified payroll numbers. Because Relator has no connection to The
24 Agency, it does not have insight into The Agency’s true liquidity position,
25 commission structure, and payroll numbers. Relator sees what it wants to see,
26 leaping to implausible conclusions and ignoring the countless, far more plausible,
27 explanations for The Agency’s need for loans during the COVID-19 pandemic.
28

1 Furthermore, Relator fails to plausibly allege that Defendants acted with
2 scienter, again engaging in speculation and absurd assertions that Defendants
3 “knew” Federal Reserve policy would lead to windfall for The Agency in the
4 middle of the pandemic. Relator also fails to make any allegations whatsoever
5 against the individual defendants, Mr. Umansky and Mr. Rose.

6 Finally, Relator’s claims are jurisdictionally barred because the “facts” upon
7 which Relator relies are based entirely on publicly available information. This
8 contravenes the essential purpose of *qui tam* suits under the FCA, which require
9 Relator to present independent knowledge to substantiate its serious accusations
10 against Defendants. Whistleblower protections are rendered meaningless when the
11 accuser merely echoes publicly known information. Relator should not be
12 permitted to misuse these protections to accuse legitimate businesses of fraudulently
13 obtaining PPP loans. For the reasons stated herein, the Complaint should be
14 dismissed with prejudice.

15 II. BACKGROUND

16 Relator LLC is a corporation established in 2022. Request for Judicial Notice
17 (“RJN”) Ex. A. Its designated agent for service of process, Peter Shahriari, and
18 organizer, Anoush Hakimi, are both attorneys.¹ *Id.* Relator LLC was set up for the
19 sole purpose of pursuing FCA *qui tam* actions in the context of PPP loans. *United*
20 *States ex rel. Relator LLC v. iLink Emps. Co.* (“*iLink II*”), No. 5:22-cv-01004-RGK-
21 DTB, 2024 WL 4197344, at *3 (C.D. Cal. Sept. 9, 2024) (“Relator is an aptly
22 named limited liability company formed for the sole purpose of filing FCA claims
23 as a relator against companies that took out PPP loans.”).

24
25
26 ¹ The State of California, Secretary of State filings for Relator LLC reference two
27 individuals, Peter Shahrari and Anoush Hakimi, both of whom are attorneys who
28 appear to practice at The Law Office of Hakimi & Shahriari. Neither attorney has
any prior association with The Agency, Defendant Umansky, or Defendant Rose.

1 Thus, this is not Relator’s first such case. Relator filed numerous such
2 actions across the country alleging FCA violations based on conclusory allegations
3 derived from publicly available information and twenty-five such lawsuits have
4 already been dismissed (either voluntarily or by motion).² The United States has
5 repeatedly declined to intervene to join in the actions brought by Relator. And in
6 two cases, the United States took the rare step of intervening for the specific

7
8 ² *United States ex rel. Relator LLC v. Delehanty*, No. 2:23-cv-05881 (C.D. Cal.
9 dismissed July 16, 2024); *United States ex rel. Relator LLC v. Bergman*, No. 2:23-
10 cv-02375 (C.D. Cal. dismissed Sept. 13, 2024); *United States ex rel. Relator LLC v.*
11 *Zach*, No. 2:23-cv-04782 (C.D. Cal. dismissed Sept. 27, 2024); *United States ex rel.*
12 *Relator LLC v. Schakett*, No. 2:23-cv-04780 (C.D. Cal. dismissed Sept. 27, 2024);
13 *United States ex rel. Relator LLC v. Lai*, No. 2:22-cv-04520 (C.D. Cal. dismissed
14 Mar. 21, 2023); *United States ex rel. Relator LLC v. Kootstra*, No. 1:22-cv-00924
15 (E.D. Cal. dismissed Sept. 25, 2024); *United States ex rel. Relator LLC v. Xu*, No.
16 4:22-cv-04954 (N.D. Cal. dismissed July 8, 2024); *United States ex rel. Relator*
17 *LLC v. Bitzer*, No. 3:229cv-04560 (N.D. Cal. dismissed July 1, 2024); *United States*
18 *ex rel. Relator LLC v. Arthur*, No. 3:22-cv-04559 (N.D. Cal. dismissed Sept. 16,
19 2024) ; *United States ex rel. Relator LLC v. Hough*, No. 3:23-cv-00343 (S.D. Cal.
20 dismissed Sept. 13, 2024); *United States ex rel. Relator LLC v. Nathan*, No. 9:23-
21 cv-80240 (S.D. Fla. dismissed May 30, 2023); *United States ex rel. Relator LLC v.*
22 *Lordi*, No. 9:23-cv-80242 (S.D. Fla. dismissed May 31, 2023); *United States ex rel.*
23 *Relator LLC v. Brenner*, No. 9:23-cv-80243 (S.D. Fla. dismissed May 31, 2023);
24 *United States ex rel. Relator LLC v. Dayhoff*, No. 0:23-cv-60292 (S.D. Fla. Apr. 30,
25 2024); *United States ex rel. Relator LLC v. Ragab*, No. 1:23-cv-00502 (dismissed
26 Sept. 18, 2024); *United States ex rel. Relator LLC v. Barake*, No. 4:22-cv-02245
27 (S.D. Tex. dismissed Oct. 13, 2022); *United States ex rel. Relator LLC v. Enszer*,
28 No. 4:22-cv-4562 (N.D. Cal. dismissed Sept. 26, 2024); *United States ex rel.*
Relator LLC v. iLink Emps. Co., No. 5:22-cv-01004 (C.D. Cal. Sept. 9, 2024);
United States ex rel. Relator LLC v. Raetz, No. 3:22-cv-04955-SK (N.D. Cal.
dismissed Oct. 16, 2024); *United States ex rel. Relator LLC v. Goldshmidt*, No.
1:24-cv-00900 (E.D.N.Y. June 21, 2024); *United States ex rel. Relator LLC v.*
Hollander, No. 9:23-cv-80241 (S.D. Fla. dismissed May 30, 2023); *United States ex*
rel. Relator LLC v. Lipschitz, No. 1:24-cv-00898 (E.D.N.Y. dismissed Sept. 11,
2024); *United States ex rel. Relator LLC v. Werzberger*, No. 1:24-cv-00899
(E.D.N.Y. dismissed Sept. 12, 2024); *United States ex rel. Relator LLC v. Manela*,
No. 2:22-cv-04781 (C.D. Cal. Sept. 26, 2024); *United States ex rel. Relator LLC v.*
W. Coast Dental Servs., Inc., No. 2:22-cv-03816 (C.D. Cal. Aug. 8, 2024).

1 purpose of dismissing the complaints due to “meritless” and “factually incorrect”
2 allegations. *See* RJN Ex. B (*United States of America et al v. Dayhoff et al*, No.
3 0:2023cv60292 (S.D. Fla. 2023); RJN Ex. C. (*United States of America et al v.*
4 *Goldshmidt et al*, No. 1:24-CV-00900 (E.D.N.Y. 2024). Despite Relator’s lack of
5 success in the many similar cases it has filed, Relator is not deterred and continues
6 to target businesses who have legitimately applied for PPP loans in hopes of
7 recovering on at least one such action to make their efforts worthwhile.

8 The Agency Holdco, Inc. is a real estate brokerage based in Los Angeles,
9 CA. Dkt. 1 (“Complaint” or “Compl.”) ¶¶ 7, 10. In March 2020, The Agency was
10 confronted with the same obstacle confronted by millions of other businesses in
11 light of the COVID-19 pandemic. As a result, The Agency applied for PPP loans in
12 hopes of limiting layoffs and continuing operations. The Agency applied for its
13 first PPP loan in April 2020 and its second PPP loan in April 2021. *Id.* ¶¶ 33-34.
14 Both loans were granted. Thereafter, it applied for forgiveness of both loans,
15 ultimately receiving full forgiveness for one loan and partial forgiveness for the
16 other. All of this information is publicly available via the Pandemic Oversight
17 website at www.pandemicoversight.gov. RJN Ex. D.

18 Relator filed the instant case against Defendants, alleging that they violated
19 the FCA through their applications for the two PPP loans. Compl. ¶ 57. The
20 Complaint is based purely on publicly available facts that Relator attempted to
21 string together to create an artificial portrayal of the series of events surrounding
22 The Agency’s application and receipt of PPP loans. Instead of alleging *actual* facts
23 about The Agency’s *actual* finances, the Complaint is replete with guesswork and
24 speculation about how Relator believes The Agency “would have” operated. *See*
25 *e.g.*, Compl. ¶ 40 (Defendants “would have” been flush with cash); ¶ 42
26 (Defendants “would have” retained sufficient reserves); ¶ 45 (“oftentimes” a real
27 estate office will earn 5%). The Complaint consists of assertion after assertion, all
28 unfounded in fact.

1 Indeed, likely due to the baseless allegations in the Complaint, on July 18,
2 2024, the United States declined to intervene in this case and the Complaint was
3 unsealed. Dkt. 16, 20. Defendants attempted to meet and confer in good faith with
4 Relator, pursuant to Local Rule 7-3, in advance of filing this motion. Porter Decl.
5 ¶ 2. Defendants contacted Relator’s counsel multiple times in an attempt to meet
6 and confer regarding this motion, but Defendants have not heard back from
7 Relator’s counsel as of the date of this filing. *Id.* Defendants now seek to dismiss
8 the Complaint.

9 III. LEGAL STANDARD

10 To survive a motion to dismiss, a complaint must contain sufficient factual
11 allegations to state a claim for relief “that is plausible on its face.” *Ashcroft v.*
12 *Iqbal*, 556 U.S. 662, 678 (2009). Where the plaintiff fails to “nudge[] [its] claims
13 across the line from conceivable to plausible, [its] complaint must be dismissed.”
14 *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “Something more than
15 speculation” is required. *Nero AG v. MPEG LA, L.L.C.*, No. 10-cv-3672, 2010 WL
16 4366448, at *7 (C.D. Cal. Sept. 14, 2020). Under this standard, “labels and
17 conclusions” and “formulaic recitations of the elements of a cause of action will not
18 do.” *Twombly*, 550 U.S. at 555. “[T]he tenet that a court must accept as true all of
19 the allegations contained in a complaint is inapplicable to legal conclusions.” *Iqbal*,
20 556 U.S. at 678-79. “In sum, for a complaint to survive a motion to dismiss, the
21 non-conclusory ‘factual content,’ and reasonable inferences from that content, must
22 be plausibly suggestive of a claim entitling the plaintiff to relief.” *Moss v. U.S.*
23 *Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009).

24 In cases alleging fraud, the complaint must also “state with particularity the
25 circumstances constituting fraud” under Federal Rule of Civil Procedure 9(b). To
26 satisfy this standard, a complaint must “identify the **who**, **what**, **when**, **where**, and
27 **how** of the misconduct charged, as well as what is false or misleading about the
28 purportedly fraudulent statement, and why it is false.” *Salameh v. Tarsadia Hotel*,

1 726 F.3d 1124, 1133 (9th Cir. 2013) (emphasis added). Plaintiffs must provide
2 notice of the specific misconduct so that the defendants are able to defend against
3 the specific charge. *United States ex rel. Miller v. Manpow, L.L.C.*, No. 2:21-cv-
4 05418, 2022 WL 18397530, at *7 (C.D. Cal. Sept. 14, 2022) (dismissing FCA claim
5 for failure to comply with Rule 9(b)).

6 IV. ARGUMENT

7 A. Plaintiff Fails To State a Claim Under the False Claims Act.

8 To state a claim under the FCA, Relator must allege: “(1) a false statement or
9 fraudulent course of conduct, (2) made with the scienter, (3) that was material,
10 causing (4) the government to pay out money or forfeit moneys due.” *United States*
11 *v. Lungwitz*, 616 F.3d 993, 997 (9th Cir. 2010) (dismissing FCA claim for lack of
12 particularity). Relator fails to plausibly allege *any* material false statements or
13 fraudulent courses of conduct, nor does it allege the requisite scienter. Relator’s
14 claims are premised on speculation and assumption and are devoid of factual
15 content sufficient to state a claim for relief. As a result, the Complaint should be
16 dismissed.

17 1. Relator Fails To Allege False Statements or a Fraudulent Course 18 of Conduct.

19 Relator’s false statement and fraud allegations fall short of the *Twombly*
20 plausibility standard and Rule 9(b) particularity standard. As an initial matter,
21 Relator’s assertions are lumped together, making it impossible to distinguish the
22 precise fraud and/or false statements being alleged and to whom these false
23 statements are being attributed. *See e.g.*, Compl. ¶ 35 (“In applying for and
24 receiving the PPP loans, Defendants knowingly made false representations of fact in
25 virtually all of the required certifications that are described above and required to be
26 eligible.”). Such pleading fails to provide each individual Defendant with fair
27 notice. *See United States ex rel. Anita Silingo v. WellPoint, Inc.*, 904 F.3d 667, 677
28 (9th Cir. 2018). Moreover, Relator does not allege with any specificity or

1 particularity *who* (individually) made the false representations, *what* the “false
2 misrepresentations of fact” were, nor *how* the alleged “false presentations” are in
3 fact, false. Plaintiff’s allegations amount to nothing more than legal conclusions.
4 *See* Compl. ¶¶ 49, 51; *see also Iqbal*, 556 U.S. at 678 (“Threadbare recitals of the
5 elements of a cause of action, supported by mere conclusory statements, do not
6 suffice.”).

7 To the extent Relator attempts to provide any specificity to their allegations,
8 the allegations are based entirely on speculation and incorrect financial assertions.
9 *See Nero AG*, 2010 WL 4366448, at *8 (dismissing claims because they rely on
10 speculation and unsupported theories). The Complaint contains two broad buckets
11 of assertions: (1) The Agency did not need the PPP funds, and (2) The Agency did
12 not use the funds appropriately. Neither passes muster under pleading standards.

13 **a. Economic Need**

14 Relator asserts that “[t]he PPP loans were not necessary to support
15 Defendants’ ongoing operations and pay their employees’ salaries ... because
16 Defendants had ample liquidity to do so.” Compl. ¶ 35. It then uses this baseless
17 assertion to claim that Defendants violated the “Economic Necessity Certification,”
18 which states “[c]urrent economic *uncertainty* makes this loan necessary to support
19 the ongoing operations of the Applicant.” *Id.* ¶ 25 (emphasis added).³

20 However, Relator’s numerous allegations about The Agency being “flush
21 with cash,” and possessing “ample liquidity,” are entirely based on speculation and
22 guesswork. Compl. ¶¶ 45, 50. In truth, having no association with The Agency,
23 and having no actual knowledge of The Agency’s finances, Relator bases its entire
24 Complaint on numbers that Relator pulled off of The Agency’s website that do not
25

26 ³ Relator also fails to acknowledge that the certification was based on “current
27 economic uncertainty” as opposed to immediate economic need. Historical or
28 future economic growth or gain are not mutually exclusive of current economic
hardship.

1 support these bare conclusions. For example, Relator relies on gross sales numbers
2 that were available on The Agency’s website for 2020 to 2021 to carry out
3 rudimentary calculations and assert that The Agency did not need the loans it
4 applied for in 2020 and 2021. *See id.* ¶¶ 35, 37, 40, 45-47. Specifically, it notes
5 that “The Agency’s sales volume increased by \$500 million in 2020.... In 2021,
6 The Agency increased its sales volume by \$5 billion.” *Id.* ¶ 37. Based on these
7 numbers alone, it then concludes that The Agency “would have been flush with
8 cash,” and there was “no economic necessity” for the loans. *Id.* ¶ 40. Not once,
9 however, does Relator allege The Agency’s *actual* revenue or liquidity position.
10 Instead, Relator asserts that Defendants “already had ample liquidity” by *falsely*
11 *equating* gross sales with profits. *See e.g., id.* ¶ 37 (alleging that “Defendants’
12 website shows their profits...”; but referencing Defendant’s “sales volume”). This
13 is a fundamental flaw in Relator’s Complaint. The Complaint is replete with
14 allegations of The Agency’s “liquidity” and “profits.” *See id.* ¶ 44 (claiming
15 Defendants “remained profitable”); ¶ 45 (“flush with cash”); ¶ 50 (“ample
16 liquidity”). But these bare conclusions find no factual support in the Complaint
17 because any allegations of The Agency’s “liquidity” or “profits” would necessarily
18 involve – in addition to gross sales – allegations of actual revenue, expenses,
19 overhead costs, debt structure, and other financial circumstances of the company,
20 which are nowhere to be found in the Complaint. Moreover, Relator fails to allege
21 what The Agency’s financial position was leading up to the pandemic, which
22 obviously would have affected the company’s liquidity position in 2020 and 2021.
23 Given these fundamental defects, Relator’s allegations fall far short of federal
24 plausibility standards. *See Iqbal*, 556 U.S. at 678.

25 Relator goes on to assert that “[o]ften times a real estate office will represent
26 both the buyer and seller in a luxury sale transaction” and earn a 5% commission on
27 property sales. Compl. ¶ 45 (emphasis added). Using this number that Relator
28 pulls out of thin air, Relator then speculates that The Agency would have received

1 half of the 5% commission. *Id.* It engages in basic math by multiplying the 2.5%
2 commission with the gross sales numbers to state that The Agency’s sales
3 commissions would be in the hundreds of millions of dollars, which Relator once
4 again incorrectly equates with liquidity or profitability. *Id.* ¶¶ 45-46 (“\$11.2 billion
5 in sales in 2021, earning a whopping \$280 million in sales commissions” and
6 claiming “The Agency could clearly afford to pay their employees without a
7 problem”). Relator merely hypothesizes about the commission structure—it does
8 not allege that commissions of 2.5% were **actually paid** on transactions that The
9 Agency brokered. *See Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th
10 Cir.) (courts are not required to accept as true “unwarranted deductions of fact”).
11 And even if 2.5% commissions were paid on some transactions, Relator does not
12 allege what portion of that commission would be paid to the real estate agent who
13 made the sale versus how much would go to The Agency as the brokerage. Again,
14 Relator’s allegations lack any connection to The Agency’s actual finances and are
15 based on complete guesswork.

16 Relator even claims that Defendants “fabricated the total number of
17 employees and their average salaries” and that “[t]here is no other explanation” for
18 why The Agency’s payroll decreased while seeing increases in gross sales.
19 Compl. ¶ 47. This, again, is pure speculation based on the mere fact that the
20 number of employees decreased from 2020 to 2021. A decrease in employees does
21 not mean that Defendants falsified information on the initial application. To the
22 contrary, there are a *number* of other, more convincing plausible explanations. The
23 Agency may have reduced the number of employees to cut costs during this
24 difficult economic period. The Agency may have reduced salary to stay afloat
25 during a global pandemic when people were not leaving their homes. These are
26 only two plausible explanations, but there are countless others. Relator’s assertion
27 that “there is no other explanation” is an implausible allegation and does not satisfy
28 the demanding requirements of particularity pleading standards. *See In re Century*

1 | *Aluminum Co. Sec. Litig.*, 729 F.3d 1104, 1108 (9th Cir. 2013) (dismissing
2 | complaint because “plaintiffs’ explanation is merely possible rather than plausible.
3 | To render their explanation plausible, plaintiffs must do more than allege facts that
4 | are merely consistent with both their explanation and defendants’ competing
5 | explanation”).

6 | The *iLink* case is directly on point here. In *iLink*, the same “Relator LLC”
7 | brought a complaint against iLink alleging substantially the same violation of the
8 | False Claims Act due to allegedly fraudulently procured PPP loans. *See United*
9 | *States ex rel. Relator LLC v. iLink Employers Co.*, (“*iLink I*”), No. 5:22-cv-01004,
10 | 2024 WL 3892980, at *3 (C.D. Cal. July 11, 2024) (Klausner, J.) (dismissing FCA
11 | complaint for failure to adequately allege falsity and scienter); *iLink II*, 2024 WL
12 | 4197344 at *3 (same). The court dismissed the case because Relator had no inside
13 | information about the defendants, and the complaint was based on unsubstantiated
14 | guesswork. *iLink II*, 2024 WL 4197344 at *3. In that case, among other
15 | accusations, Relator alleged that iLink falsified its employee count. *Id.* However,
16 | the court found this allegation to be speculative because “Relator does not offer any
17 | factual allegations pertaining to iLink Employers’ employees or business model, to
18 | support this speculation.” *Id.* It also found that “Relator simply speculates about
19 | the two entities’ organization and structure given their shared ownership by the
20 | same CEO” and therefore fails to “plausibly allege” that two of the defendants were
21 | the same entity. *Id.* at *4. As a result, the court dismissed the complaint with
22 | prejudice. *Id.*

23 | The situation is the same here. Relator’s Complaint is teeming with
24 | speculation unsupported by factual allegations about The Agency’s financial
25 | position, employee count, and use of PPP funds. *See e.g.*, Compl. ¶¶ 37, 45, 46, 50.
26 | Such a “sparse” Complaint must be dismissed. *See iLink I*, 2024 WL 3892980, at
27 | *3 (emphasis added) (finding that to substantiate false statements, allegations
28 | involving “extensive details about the defendants’ operations, including the number

1 and locations of their offices and affiliates, the method they used to calculate
2 employment expenses, and the process by which their affiliates reimbursed their
3 expenses” were “*essential* to show that the defendants falsely reported employee
4 counts and payroll costs, and that they did so knowingly to defraud the United
5 States”).

6 Relator advances zero factual allegations to substantiate *how* Defendants
7 falsely reported employee counts and payroll costs. Relator is not relieved of
8 proving these supporting facts just because it is an outside party. *See United States*
9 *v. Lungwitz*, 616 F.3d at 999 (“To jettison the particularity requirement simply
10 because it would facilitate a claim by an outsider is hardly grounds for overriding
11 the general rule, especially because the FCA is geared primarily to encourage
12 insiders to disclose information necessary to prevent fraud on the government.”).
13 Relator fails to state a legally plausible claim premised on false statements
14 regarding economic need.

15 **b. Appropriate Use of Funds**

16 Relator also contends that The Agency did not use the PPP loan funds for
17 appropriate purposes. Compl. ¶¶ 35, 57 (“Their request for forgiveness contained a
18 further misrepresentation that the loans had been used only for authorized
19 purposes.”). It alleges that “[The SBA] would not have forgiven the loans if they
20 knew the proceeds had been used to increase profits instead of paying their
21 employees.” *Id.* ¶ 50. However, Relator offers no factual allegations regarding
22 *how* these loan monies were spent and for *how it knows* loans were not used to pay
23 employees, other than once again relying on the same artificial math using gross
24 sales numbers to inaccurately predict what employee salary must be. *See id.* ¶ 47.
25 It does not even assert but implies, that such monies could not have been used for
26 the acceptable purposes because of The Agency’s purported financial condition.
27 *Id.* ¶ 51. As described above, the allegations regarding the Agency’s finances are
28 hypothetical and speculative. The reality is that Relator did not produce any

1 particular allegations with respect to their claim that The Agency used these funds
2 for inappropriate purposes.

3 Relator’s failure to even attempt to satisfy the pleading standards to state a
4 claim for fraud is not a fortuitous consequence of draftsmanship – it is a
5 fundamental defect in Relator’s Complaint borne out of the fact that Relator simply
6 does not know how the PPP funds were used. Where a complaint fails to allege the
7 fundamental elements of a fraud claim, dismissal is warranted. *See iLink I*, 2024
8 WL 3892980 at *3 (dismissing complaint because plaintiff failed to “adequately
9 allege falsity” as to any defendant).

10 **2. Relator Fails To Allege Scienter.**

11 In addition to falling woefully short of establishing false statements or fraud
12 with particularity, Relator fails to allege that the Defendants “knowingly” violated
13 the FCA in its application for a PPP loan. The FCA expressly requires a showing of
14 scienter and defines “knowing” to mean “actual knowledge of the information,” or
15 acting in either “deliberate ignorance” or “reckless disregard of the truth or falsity
16 of the information.” 31 U.S.C. § 3729(b)(1)(A). To show scienter, it is insufficient
17 to merely allege knowledge as to the existence of regulatory requirements—Relator
18 must instead allege knowledge *as to the false claim itself*. *See United States ex rel.*
19 *Durkin v. Cty. of San Diego*, 300 F. Supp. 3d 1107, 1128-30 (S.D. Cal. 2018)
20 (holding that relator “failed to sufficiently allege that Defendant made a false
21 statement with deliberate ignorance or reckless disregard” because relator “fails to
22 address how Defendant deliberately ignored or recklessly disregarded the truth or
23 falsity of the statements”). “[I]nnocent mistakes, mere negligent misrepresentations
24 and differences in interpretations will not suffice to create liability.” *United States*
25 *v. Corinthian Colls.*, 655 F.3d 984, 996 (9th Cir. 2011) (quoting *Hedow*, 461 F.3d at
26 1174).

27 Relator’s attempts to establish scienter are weak and formulaic, failing to
28 meet the pleading standard set by *Twombly*, 550 U.S. at 555. For instance, Relator

1 claims Defendants received loan forgiveness “knowing they were ineligible for the
2 loans in the first place” without explaining why. Compl. ¶ 8. Similarly, it states
3 that “Defendants knowingly made false representations of fact in virtually all of the
4 required certifications” without documenting factual allegations regarding
5 Defendants’ knowledge of violating the PPP loan requirements. *Id.* at ¶ 35. It goes
6 on to conclude that Defendants “unquestionably knew [certifications] were false
7 when they applied for the second loan in 2021.” *Id.* at ¶ 51. These are all formulaic
8 recitations of the statute that do not establish scienter. *See United States, ex rel.*
9 *Modglin v. DJO Glob. Inc.*, 114 F. Supp. 3d 993, 1024 (C.D. Cal. 2015) (dismissing
10 relator’s Medicare FCA claim for failure to plead facts and false certifications with
11 particularity and failure to allege scienter because “allegations that defendants
12 ‘knew that they were falsely and/or fraudulently claiming reimbursement’ and
13 ‘knew [their devices] were being unlawfully sold for unapproved off-label cervical
14 use’ are too conclusory to plead a plausible claim for relief, even under the relaxed
15 standard of Rule 8(a).”), *aff’d sub nom. United States v. DJO Glob., Inc.*, 678 F.
16 App’x 594 (9th Cir. 2017); *iLink I*, 2024 WL 3892980 at *3 (dismissing for lack of
17 scienter because “other than reciting the legal element of scienter, the Complaint is
18 devoid of any relevant factual allegations and, therefore, cannot demonstrate
19 Defendants’ knowledge and intent”). And as noted above, merely having
20 knowledge of PPP loan requirements is not sufficient to establish scienter. *See*
21 *Durkin*, 300 F. Supp. 3d at 1128-30.

22 In some instances, Relator’s allegations as to scienter even border on the
23 absurd. For example, Relator claims that Defendants “knew at the time they
24 applied for and received the PPP loans that they would be the beneficiaries of a
25 once-in-a-lifetime real estate boom” and that they “knew the Federal Reserve’s zero
26 interest rate policy and mortgage backed securities buying program of quantitative
27 easing (nearly \$3 trillion dollars) would result in a boom in the real estate market.”
28 Compl. ¶ 39. Because of this, Defendants supposedly *knew* that they did not need

1 PPP money. *Id.* Not only is this a baseless assertion, but it is also pure speculation
2 and entirely unrealistic given that the world economy essentially shut down during
3 the pandemic. Relator’s assertion would essentially mean that any business that
4 could hypothetically experience growth in the future could not receive a PPP loan.
5 This would lead to an absurd outcome.

6 Plainly stated, because Relator fails to show scienter, the Complaint falls
7 short of adequately stating a claim and should be dismissed with prejudice.

8 **3. Defendants Umansky and Rose Should Be Dismissed Because the**
9 **Complaint Fails To Allege Fraud Against Them.**

10 Relator’s Complaint makes broad, conclusory allegations against *all*
11 Defendants. The Rule 9(b) particularity requirement “does not allow a complaint to
12 merely lump multiple defendants together but require[s] plaintiffs to differentiate
13 their allegations when suing more than one defendant.” *Swartz v. KPMG LLP*, 476
14 F.3d 756, 764-65 (9th Cir. 2007) (quotation omitted). The Complaint makes a total
15 of zero *specific*, cognizable allegations regarding either Defendants Umansky or
16 Rose. There are no specific, affirmative facts showing either Defendant Umansky
17 or Defendant Rose knowingly provided false information on The Agency’s PPP
18 loan applications or applications for loan forgiveness. Nor does the Complaint
19 include facts that would plausibly support the allegation that Defendants Umansky
20 or Rose presented or caused to be presented, the submission of any false claims. In
21 fact, the Complaint mentions both individuals a handful of times, primarily in the
22 context of introducing the parties, but in none of the instances does it allege what
23 role they purportedly played with respect to the PPP loans. Compl. ¶¶ 5, 7, 11-12,
24 39, 48. Relator therefore failed to establish the elements of falsity and scienter with
25 respect to these individuals, and the Complaint as to Defendants Umansky and Rose
26 should be dismissed.

1 **B. The Court Lacks Jurisdiction Under the FCA Public Disclosure Bar.**

2 Relator’s Complaint fails to state a claim for all the reasons articulated above.
3 But even so, this Court lacks jurisdiction over Relator’s claim because it is barred by
4 the public disclosure bar. The public disclosure bar states that the court shall dismiss
5 an action, unless opposed by the government, “if substantially the same allegations
6 or transactions . . . were publicly disclosed,” including but not limited to, in “a
7 congressional, Government Accountability Office, or other Federal report, hearing,
8 audit, or investigation,” or “from the news media,” unless the relator is an “original
9 source of the information.” 31 U.S.C. § 3730(e)(4)(A). The FCA allows relators
10 with valuable information to assist the United States government in recovering
11 funds; however, through the public disclosure bar, Congress expressly intended to
12 prevent recovery by “parasitic” plaintiffs “who have no significant information to
13 contribute of their own.” *United States ex rel. Mateski v. Raytheon Co.*, 816 F.3d
14 565, 577 (9th Cir. 2016); *see Campbell v. Redding Med. Ctr.*, 421 F.3d 817, 820
15 (9th Cir. 2005) (“[The False Claims Act] prevents opportunistic individuals from
16 bringing qui tam action—and sharing in the government’s recovery—when they
17 have done nothing to expose the allegations of fraud.”).

18 Courts employ a two-step inquiry to determine whether the public disclosure
19 bar precludes an FCA claim. *U.S.A. ex rel. Calva v. Impac Secured Assets Corp.*,
20 No. SACV 16-1983, 2018 WL 6016152, at *3 (C.D. Cal. June 12, 2018). **First**, the
21 Court must determine whether there was a prior public disclosure of the allegations
22 or transactions. *Id.* **Second**, if there is a “public disclosure,” then the Court must
23 determine whether the relator is an “original source” within the meaning of the
24 statute. *Id.*

25 Here, the allegations or transactions referred to in the Complaint were all
26 disclosed to the public, and Relator thus is not an original source. Therefore, the
27 Complaint must be dismissed.
28

1 **1. The Allegations Have Been Disclosed to the Public.**

2 Relator’s Complaint is rife with conclusory allegations and contains very few
3 facts, all of which have been publicly disclosed. As one court found in a previous
4 lawsuit involving this same plaintiff, Relator LLC, it is not a genuine whistleblower
5 because it bases its allegations on publicly disclosed facts. *See United States ex rel.*
6 *Relator, LLC v. Kootstra*, No. 1:22-cv-00924, 2024 WL 3666470, at *5 (E.D. Cal.
7 Aug. 6, 2024). In *Kootstra*, the court granted the motion to dismiss Relator’s
8 complaint based on the public disclosure bar, noting that the complaint was at “odds
9 with the purpose of qui tam actions.” *Id.* The court found that “relator’s allegations
10 appear to be based entirely on public information” noting that “Relator does not
11 cite—nor can the Court locate—any information in the Complaint that materially
12 adds to the public disclosures or shows that Relator had any independent knowledge
13 of the alleged fraud.” *Id.*

14 The Court should reach the same result here. First, the meager facts in the
15 Complaint have all been disclosed to the public as part of the federal government’s
16 effort to be transparent about PPP loans. The facts upon which Relator purports to
17 “whistle blow” are available via the PandemicOversight.gov database, which states
18 that it is an “official website of the United States government” dedicated to “making
19 sense of COVID-19 relief spending and programs.” RJN Ex. E. This website
20 includes the same facts alleged in the Complaint including: the bank lender, the loan
21 amount, loan date, forgiveness amount, the number of jobs reported, and payroll
22 information. *See* Compl. ¶¶ 33-34, 45-47. Even though the Complaint includes other
23 conclusory allegations, such as the bare-bones statement that The Agency’s
24 employment numbers and average salaries are false, the actual facts in the Complaint
25 can be located from the PandemicOversight.gov database. RJN Ex. D; *see* Compl. ¶¶
26 8, 35, 47, 50-51.

27 Next, Relator also cherry-picks information from The Agency’s *own public*
28 *website*—such as gross sales volume data—and makes conclusory allegations about

1 the alleged falsity of the information reported in Defendants’ PPP loan applications.
2 *See* Compl. ¶¶ 37 (“Data available on Defendants’ website shows that their profits
3 increased substantially during the pandemic...”), *id.* at ¶ 43 (“Defendants’ own
4 website confirms the dramatically greater impact of the current downturn compared
5 to the brief COVID related market decline...”); *see also* RJN Ex. F (“The brokerage
6 achieved its most successful year yet, hitting over \$11 billion in sales volume over
7 the course of the year, up 69% from 2020.”). Just as in *Kootstra*, all of the
8 operative facts have been publicly disclosed and the Complaint should be
9 dismissed.

10 To determine whether there was a public disclosure, courts typically assess
11 three factors: (1) whether the disclosure at issue occurred through one of the
12 channels specified in 31 U.S.C. § 3730(e)(4)(A); (2) whether the disclosure was
13 public; and (3) whether the relator’s action is substantially the same as the allegation
14 or transaction publicly disclosed. *Silbersher v. Valeant Pharms. Int’l, Inc.*, 89 F.4th
15 1154, 1163 (9th Cir. 2024), *cert. denied*, No. 23-1093, 2024 WL 4426651 (U.S. Oct.
16 7, 2024). Here, all three of these factors have been met.

17 First, the disclosure at issue occurred through one of the channels specified in
18 the statute because the [PandemicOversight.gov](https://www.pandemicoversight.gov) website meets the definition of a
19 “federal report” as set forth in 31 U.S.C. § 3730(e)(4)(A)(ii). *See Kootstra*, 2024
20 WL 3666470 at *4 (concluding [PandemicOversight.gov](https://www.pandemicoversight.gov) constitutes a “federal
21 report” within the meaning of the public disclosure bar); *United States ex rel. Rosner*
22 *v. WB/Stellar IP Owner, LLC*, 739 F. Supp. 2d 396, 405, 407 (S.D.N.Y. 2010) (a
23 “database available on a government website” can qualify as a “report” under the
24 public disclosure bar when “readily available,” “free,” and “easily navigable”).
25 Additionally, both the [PandemicOversight.gov](https://www.pandemicoversight.gov) website and The Agency’s website
26 qualify as “news media” under 31 U.S.C. § 3730(e)(4)(A)(iii), because “information
27 publicly available on the Internet generally qualifies as news media.” *United States*
28 *ex rel. Hong v. Newport Sensors, Inc.*, No. SACV 13-1164, 2016 WL 8929246, at

1 *5 (C.D. Cal. May 19, 2016) (finding that online awards database, project index,
2 faculty profile, and FOIA disclosures were all “public” and occurred through the
3 channels identified in the statute), *aff’d*, 728 F. App’x 660 (9th Cir. 2018). Thus,
4 the disclosure at issue in this case occurred through the channels specified in the
5 statute.⁴

6 Second, the disclosure was “public” because the [PandemicOversight.gov](https://pandemicoversight.gov)
7 website and The Agency website are available to and easily searchable by anyone in
8 the general public with an internet connection. Relator is a member of the public
9 who is now the recipient of this information and is seeking to pursue an FCA
10 lawsuit based on it. *See Malhotra v. Steinberg*, 770 F.3d 853, 860 (9th Cir. 2014)
11 (finding that disclosure is “public” if “the recipient of the disclosure be an outsider
12 to the investigation who now seeks to profit from it as an FCA relator.”) (internal
13 quotation omitted).

14 Third, Relator’s action is substantially the same as the allegation or
15 transaction that was publicly disclosed. An “allegation” refers to a prior “direct
16 claim of fraud,” whereas a “transaction” refers to the disclosure of “facts from which
17 fraud can be inferred.” *Id.* at 1167. The phrase “allegations or transactions” is
18 “wide-reaching.” *Schindler Elevator Corp. v. United States ex rel. Kirk*, 563 U.S.
19 401, 408 (2011). In the Ninth Circuit, “for a relator’s allegations to be based upon a
20 prior public disclosure, the publicly disclosed facts need not be identical with, but
21 only substantially similar to, the relator’s allegations.” *Mateski*, 816 F.3d at 573
22 (quotation omitted). Here, the [PandemicOversight.gov](https://pandemicoversight.gov) website results for The
23 Agency show the company name and address, the loan amounts, the loan amounts
24 forgiven, dates the loans were approved, the lenders, the number of jobs reported,
25

26 ⁴ Elements of the fraud allegation or transaction need not have been made public in
27 a single document for the purposes of the public disclosure bar. *Hong*, 2016 WL
28 8929246, at *6. Thus, it is inconsequential that the public disclosures here occurred
on both [PandemicOversight.gov](https://pandemicoversight.gov) and The Agency website.

1 and the spending category (in this case, payroll). RJN Ex. D. The Agency’s
2 website also provides gross sales numbers. *Id.* These are the facts upon which
3 Relator bases its Complaint. Thus, the allegations in the Complaint are based on a
4 prior public disclosure. *See Mateski*, 816 F.3d at 573.

5 Given that all of the underlying facts in Relator’s Complaint are disclosed to
6 the public on PandemicOversight.gov, or on The Agency’s website, this is sufficient
7 to show that at minimum, the transactions underlying the alleged fraud were also
8 disclosed to the public. *See Compl.* ¶¶ 37, 43. The public disclosure bar does not
9 mandate that the allegations in the Complaint be disclosed to the public so long as *the*
10 *transactions* in the complaint were so disclosed. It also does not require “an explicit
11 ‘allegation’ of fraud” in the prior disclosures. *Mateski*, 816 F.3d at 571. Rather,
12 where “the material elements of the allegedly fraudulent transaction are disclosed in
13 the public domain,” the public disclosure bar applies. *Id.*

14 Thus, since the allegations or transactions that form the basis for Relator’s
15 Complaint have been publicly disclosed, the public disclosure bar applies here to
16 bar Relator’s claim.

17 **2. Relator by Law Cannot Be Considered an Original Source and**
18 **Does Not Plead Any Facts Suggesting It Is an Original Source.**

19 An “original source” refers to an individual who either (1) “prior to a public
20 disclosure under subsection (e)(4)(a) has voluntarily disclosed to the Government
21 the information on which allegations or transactions in a claim are based,” or (2)
22 “who has knowledge that is independent of and materially adds to the publicly
23 disclosed allegations or transactions, and who has voluntarily provided the
24 information to the Government before filing an action under this section.” 31 U.S.C.
25 § 3730(e)(4)(B). The burden is on the relator to establish that it is the original
26 source of the information to avoid dismissal. *United States v. Bd. of Trs. of Leland*
27 *Stanford, Jr. Univ.*, 161 F.3d 533, 540 (9th Cir. 1998).

28

1 Relator’s Complaint is deficient in two regards with respect to its status as an
2 original source.

3 First, Relator cannot be an original source because neither Relator nor its
4 officers were ever employees of The Agency and thus cannot have any
5 “independent” knowledge of the alleged fraud. *See* 31 U.S.C. § 3730(e)(4)(B)(ii).
6 Relator must show it had relevant evidence of fraud prior to the public disclosure in
7 order to prove independent knowledge. *See Amphastar Pharm. Inc. v. Aventis*
8 *Pharma SA*, 856 F.3d 696, 702 n.8 (9th Cir. 2017), *superseded by statute on other*
9 *grounds*, Patient Protection & Affordable Care Act, Pub. L. No. 111-148, 124 Stat.
10 119, *as recognized in Silbersher*, 89 F.4th at 1169. Here, Relator’s knowledge
11 clearly is *not* independent—that is, “obtained by the relator before the evidence of the
12 fraud was disclosed to the public”—but rather was obtained from a publicly available
13 database. *Id.* at 702 n.8. Relator does not even attempt to plead in its Complaint
14 *how* it could possibly have had insider information about The Agency. To the
15 contrary, courts have determined that a relator such as the one here, who was never
16 employed by defendant, simply does not have the type of independent knowledge
17 required by the statute. *See Rockwell Int’l Corp. v. United States*, 549 U.S. 457,
18 475 (2007) (reasoning that relator could not possess the required independent
19 knowledge to qualify as an original source when it was not employed by the
20 company at the time the alleged fraud occurred).

21 Second, Relator includes only one sentence—a mere recitation of the elements
22 of the original source rule contained in U.S.C. § 3730(e)(4)(B)—to support its claim
23 that it is an original source, which is insufficient under pleading standards. *Twombly*,
24 550 U.S. at 545 (a “formulaic recitation of the elements of a cause of action” is not
25 sufficient to state a claim); *see* Compl. ¶ 4 (“To the extent that there were any public
26 disclosure unknown to Relator, it is the ‘original source’ as defined in 31 U.S.C.
27 § 3730(e)(4)(B) and/or the public disclosure is a result of Relator voluntarily
28 providing this information to the United States Government prior to filing this *qui*

1 | *tam* action.”). There are also no indicia in the Complaint to suggest that Relator had
2 | preexisting knowledge that was provided to the government *before* any public
3 | disclosure. *See* 31 U.S.C. § 3730(e)(4)(B)(i). Because Relator is not an original
4 | source, the public disclosure bar applies, and this Court lacks jurisdiction over the
5 | Complaint.

6 | **C. The Complaint Should Be Dismissed With Prejudice.**

7 | Relator’s Complaint should be dismissed with prejudice. “In deciding
8 | whether justice requires granting leave to amend, factors to be considered include
9 | the presence or absence of undue delay, bad faith, dilatory motive, repeated failure
10 | to cure deficiencies by previous amendments, undue prejudice to the opposing party
11 | and futility of the proposed amendment.” *Moore v. Kayport Package Express, Inc.*,
12 | 885 F.2d 531, 538 (9th Cir. 1989) (upholding denial of leave to amend to add
13 | claims because the claims were not pled with sufficient specificity). The filing of
14 | any further complaint here would be futile because Relator does not have means to
15 | obtain additional or new information regarding Defendants. The Court should
16 | therefore dismiss Relator’s Complaint with prejudice. *Havas v. Thornton*, 609 F.2d
17 | 372, 376 (9th Cir. 1979) (upholding dismissal with prejudice where “leave to
18 | further amend the complaint would have served no purpose, since the acts
19 | complained of could not constitute a claim for relief”); *see also iLink II*, 2024 WL
20 | 4197344, at *4 (denying leave to amend because “further amendment would be
21 | futile”).

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V. CONCLUSION

For all the foregoing reasons, Defendants respectfully request that the Court dismiss the Complaint with prejudice.

DATED: October 24, 2024

DAVIS WRIGHT TREMAINE LLP
ALEXANDER F. PORTER
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By: /s/ Alexander F. Porter
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CERTIFICATIONS OF COMPLIANCE

The undersigned, counsel of record for the Defendants, certifies that this brief contains 6,958 words, which complies with the word limit of L.R. 11-6.1.

DATED: October 24, 2024

/s/Alexander F. Porter
Alexander F. Porter

I certify that on October 10, October 14, and October 16, 2024, Defendants’ counsel sent Relator’s counsel three separate email invitations to meet and confer by videoconference to thoroughly discuss each and every issue raised in the motion, and attempt in good faith to resolve the motion in whole or in part. As of the date of this filing, Relator’s counsel has yet to respond and has failed to fulfill its obligation to meet and confer in good faith.

DATED: October 24, 2024

/s/ Alexander F. Porter
Alexander F. Porter

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