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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES ex rel. CRAIG LOVE

Plaintiff,

v.

COLUMBIA UNIVERSITY IN THE CITY OF
NEW YORK; COLUMBIA UNIVERSITY
MEDICAL CENTER; MAILMAN SCHOOL OF
PUBLIC HEALTH; and INTERNATIONAL
CENTER FOR AIDS CARE AND TREATMENT
PROGRAM

Defendants.
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UNITED STATES OF AMERICA

Plaintiff,

v.

THE TRUSTEES OF COLUMBIA UNIVERSITY
IN THE CITY OF NEW YORK; and ICAP (fka)
INTERNATIONAL CENTER FOR AIDS CARE
AND TREATMENT PROGRAMS

Defendants.
-----X

: 11 Civ. 4353 (LGS)

: **COMPLAINT-IN-INTERVENTION**
: **OF THE UNITED STATES**

The United States of America, by its attorney Preet Bharara, United States Attorney for the Southern District of New York, alleges for its complaint as follows:

Preliminary Statement

1. This is a civil action brought by The United States of America (the “Government”) against the Trustees of Columbia University in the City of New York (“Columbia”) and Columbia University’s International Center for AIDS Care and Treatment Program (“ICAP”) for violations of the False Claims Act, 31 U.S.C. § 3729, *et seq.* (the “FCA”) to recover treble damages sustained by, and civil penalties owed to, the Government as a result of ICAP’s failure to properly track employee effort and appropriately charge federal grants from 2004 through 2012.

Jurisdiction and Venue

2. This Court has subject matter jurisdiction over the Governments claims under the FCA pursuant to 28 U.S.C. §§ 1331 and 1345.

3. This Court may exercise personal jurisdiction over Columbia and ICAP, and venue is proper in this District pursuant to 31 U.S.C. § 3732(a), as well as 28 U.S.C. §§ 1391(b) and 1391(c), because Columbia resides and conducts business in this District.

The Parties

4. Plaintiff is the United States of America. Through its various agencies, including the Centers for Disease Control and Prevention (“CDC”), the National Institutes of Health (“NIH”), the Health Resources and Services Administration (“HRSA”), the United States Agency for International Development (“USAID”) and others, the Government awards and administers federal research grants.

5. Relator Craig W. Love is a resident of New York and was the Director of Finance at ICAP from September 2008 through May 2011.

6. Defendant Columbia is a university located in New York, New York. ICAP is part of the Mailman School of Public Health at Columbia University and is also located in New York, New York.

The False Claims Act and OMB Circular A-21

7. The False Claims Act, 31 U.S.C. § 3729 *et seq.* (“FCA”), reflects Congress’s objective to “enhance the Government’s ability to recover losses as a result of fraud against the Government.” S. Rep. No. 99-345, at 1 (1986), available at 1986 U.S.C.C.A.N. 5266. As relevant here, the FCA establishes civil penalties and treble damages liability to the United States for an individual or entity that:

(A) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;

or

(B) knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;

31 U.S.C. § 3729(a)(1)(A)-(B).

8. “Knowing,” within the meaning of the FCA, is defined to include reckless disregard and deliberate indifference to the truth or falsity of the information. *Id.* § 3729(b)(1).

9. OMB Circular No. A-21 (the “Circular”), codified at 2 C.F.R. Part 220 (Cost Principles for Educational Institutions (OMB Circular A-21)), establishes “principles for determining costs applicable to grants, contracts, and other agreements with educational institutions.” Circular, Preamble ¶ 1; 2 C.F.R. § 220.5. The Circular applies to “[a]ll Federal agencies that sponsor research, development, training, and other work at educational institutions,” and is “designed to provide that the Federal Government bear its fair share of total

costs.” Circular, Preamble ¶ 1; 2 C.F.R. § 220.15-20. With limited exceptions not applicable here, the Circular requires recipients of federally sponsored agreements, *e.g.*, grants, to charge grants only for work actually performed as a part of that sponsored agreement.

10. Section 10 of the Attachment to the Circular sets forth principles for allocating employee salary, wages, and fringe benefits to federal grants and agreements. For institutions that receive funding from multiple federal and non-federal sources, the Circular prescribes that “the apportionment of employees’ salaries and wages which are chargeable to more than one sponsored agreement or cost objective will be accomplished by methods which will ... produce an equitable distribution of charges for employee’s activities.” Circular, Attachment § J.10.b(1)(b); 2 C.F.R. Part 220, Appendix A § J.10.b(1)(b).

11. The Circular does not require a specific method of apportioning employee salaries across multiple sources, but does provide several “Examples of Acceptable Methods for Payroll Distribution.” One of the suggested methods of payroll distribution is the “plan-confirmation” system, under which “the distribution of salaries and wages of professorial and professional staff applicable to sponsored agreements is based on budgeted, planned, or assigned work activity, updated to reflect any significant changes in work distribution.” *Id.* § J.10.c(1). For a university using a plan-confirmation effort reporting system, the Circular requires, *inter alia*, that for each employee charged to a federal agreement “[a]t least annually a statement will be signed by the ... principal investigator...using suitable means of verification that the work was performed, stating that salaries and wages charged to sponsored agreements as direct charges, and to residual, F&A cost or other categories are reasonable in relation to work performed.” *Id.* § J.10c(1)(e)).

Factual Allegations

I. PEPFAR, MCAP and ICAP

12. In 2004, President Bush created the President's Emergency Plan for AIDS Relief ("PEPFAR program"), a global HIV/AIDS program that provided \$9 billion in new funding to ramp up prevention, treatment, and care services in 15 of the most affected countries of the world. The program was expanded in 2008 under the Tom Lantos and Henry J. Hyde United States Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008. Certain components of the federal government, including CDC, among others, have authority to award grants of PEPFAR funds to qualifying institutions.

13. In 2004, the CDC awarded Columbia \$125 million in PEPFAR funding through the Multicountry Columbia Antiretroviral Program ("MCAP") grant. The MCAP grant was a five-year cooperative agreement between the CDC and Columbia for comprehensive AIDS care and treatment in five countries in sub-Saharan Africa.

14. Upon receiving the MCAP grant, Columbia created ICAP in order to provide support and services for HIV prevention and treatment worldwide and brought multiple HIV/AIDS programs in the Mailman School under one umbrella. ICAP maintains an office in New York City, which provides administrative and financial functions, technical assistance, and content expertise for ICAP's in-country offices. As relevant to the Government's action, ICAP's New York office contains the following functional areas: Finance and Compliance, Grants and Development, Subcontracts, IT & Communications, Monitoring and Evaluations, General Administration, Human Resources, Accounts Payable and Purchasing, Implementation and Programs, and Clinical and Training.

15. In addition to receiving the initial MCAP grant from CDC, Columbia has also received millions of dollars in grant money from other federal agencies, including HRSA, NIH and USAID, to support various HIV prevention, care, and treatment initiatives run by ICAP. (As relevant here, each of the grants is listed in Exhibit A, attached hereto. For ease of reference, the listed grants will be collectively referred to as the “Federal Grants” or “Sponsored Agreements.”) Pursuant to the Circular, only expenses attributable to a particular federal grant may be charged to such grant; expenses attributable to other grants, may not.

16. In addition to the Federal Grants, Columbia also received grants from non-federal sources, *e.g.*, private institutions and New York State, for ICAP’s work (the “Other Grants”). Columbia also contributed directly to ICAP’s finances by paying for expenses that were not directly covered by Federal or Other Grants. Specifically, Columbia set up a “non-sponsored” account, which was used, among other things, to accrue expenses not directly attributable to any Federal or Other Grant (the “Non-Sponsored Account”).

II. Effort Reporting

17. Pursuant to the Circular, recipients of federally sponsored agreements, *e.g.*, grants, are required to track the work performed by the recipient’s employees and, with limited exceptions not applicable here, charge grants only for work actually performed as a part of that sponsored agreement. Columbia’s university-wide effort tracking system used the plan-confirmation method described in the Circular.

18. The Circular requires a plan-confirmation system to “reflect activity applicable to each sponsored agreement and to each category needed to identify F&A costs and the functions to which they are allocable.” Circular § 10.c(1)(c). In furtherance of this requirement, the ICAP New York office annually produced effort reports for its New York City-based employees

purportedly detailing the employee's distribution of work across any applicable Federal Grant, Other Grant, and the Non-Sponsored Account.

19. The effort reports state, among other things, the percentage of each employee's salary that was charged to a particular grant or account. The percentage of an employee's time spent on a particular grant is the same as the portion of his salary that is charged to a particular grant or account. According to the Circular, each employee's salary should be charged to the grants/accounts that the employee worked on, in proportion to the amount of time the employee actually spent. The regulations and effort reporting systems should be designed to ensure that each grant is only charged for the portion of an employee's work that was related to the grant, in keeping with the Circular's dictum that the Government only "bear its fair share of total costs."

20. The Circular requires effort reports to be created and signed at least annually. Certain individuals, *e.g.*, professors, instructors, research scientists, directors and other executives, are "self-certifiers" and thus certify the accuracy of their own time as allocated on the effort reports. Other individuals, however, are "non-self-certifiers." As relevant here, ICAP's New York office had nearly 200 non-self-certifiers for the relevant time period (the "NYC Non-self-certifiers") and had their effort reports certified by the principal investigator for each grant to which their time was allocated. In certifying the effort reports of the NYC Non-self-certifiers, the principal investigator was required to do so using a "suitable means of verification that the work was performed."

III. ICAP's Effort Reporting Deficiencies

A. Effort Reports Were Developed With Little Regard for Actual Effort

21. The Finance Department developed proposed and actual budgets for each grant ICAP received. As ICAP received funds from various grants throughout the year, the Finance

Department worked with other ICAP functional areas to update the budgets to reflect the needs of the various grants. The personnel line items in most budgets allocated either a specific individual or a generic title, such as "TBN- Ass. Accountant," to the budget for a set annual base salary. The base salaries were then prorated based on the number of months such employee was expected to work on the grant and the percentage of time and effort the employee was expected to dedicate to the grant.

22. Individual employee effort, however, was not tracked throughout the year at ICAP. Budgets were updated throughout the year as new grants came online, but while the Finance Department, through consultation with other departments in the New York office, knew the overarching needs of each grant (such as how many accountants or data officers a grant required), it was not aware of the individual work or effort an individual ICAP employee actually spent on any one grant. The Finance Department did not discuss with other departments how individual employees spent their time or how much time any particular employee had available to dedicate to a particular grant.

23. In short, the Finance Department did not check whether individuals charged under those line items had actually performed an amount of work reasonably proportionate to the charged effort. As a result, the budgets were premised on the personnel needs of a grant, but not based on information related to time individuals reasonably devoted to the grant.

24. Despite being unrelated to the actual time particular individuals devoted to particular grants, the budgets formed the basis for the salary allocations reflected in the effort reports for the NYC Non-self-certifiers. Specifically, at the end of each fiscal year, the Finance Department used the budgets to send the salary allocations to ICAP's Administrative Manager. The Administrative Manager entered the allocations for the NYC Non-self-certifiers into

Columbia's effort reporting system. The effort reports were then reviewed and electronically signed and certified by the principal investigator for each grant. As noted above, in order to certify the NYC Non-self-certifiers' effort reports, the principal investigator on each grant was required to have used a suitable means of verifying the accuracy of the time each individual's effort report allocated to each grant. The principal investigators for most grants were directors at ICAP.

B. ICAP Did Not Have a Suitable Means of Verifying the Accuracy of Effort Reports

25. For the relevant time period and for many NYC Non-self-certifiers, ICAP failed to have a suitable means of verifying how they spent their time, as reflected in the effort reports. As noted, ICAP had over 200 NYC Non-self-certifiers, and ICAP was required to allocate the time of these employees across more than 75 grants. These employees were not assigned to particular grants. Rather, the NYC Non-self-certifiers were administrative employees who worked in functional areas, such as Finance and Compliance, and Grants and Development, and focused on multiple in-country projects. These employees' salaries were billed to multiple funding sources. Yet the NYC Non-self-certifiers were not asked to, and did not as a matter of practice, track or make a reasonable estimate of the amount of time they dedicated to particular grants. Indeed, employees were not asked to review their own effort report in any way until 2011, and most employees had never seen, or were never even aware of, their own effort reports until that time.

26. For many NYC Non-self-certifiers, neither supervisory staff nor the principal investigators possessed sufficient or regularized knowledge of the time, or reasonable estimate thereof, that each employee spent on particular grants. Neither ICAP supervisory level employees nor principal investigators, as a matter of practice, asked the employees they managed

how their time was divided between various grants. Further, there were many NYC Non-self-certifiers with whom the principal investigators had limited to no interaction, including the NYC Non-self-certifiers working in Finance and Compliance, Subcontracts, IT & Communications, General Administration, and Accounts Payable, and who regularly worked on multiple grants. Despite lacking any documentation or sufficient familiarity with the majority of the Non-self-certifiers' work on particular grants, the principal investigators certified the effort reports for the staff in these areas in large batches, with as little as one or two minutes spent on each report.

27. In short, without any documentation, record or direct or indirect knowledge of how a substantial number of Non-self-certifiers apportioned their time among grants, the principal investigators had no suitable means of verifying that the individual effort listed on each effort report was accurate, and they frequently had no way of knowing what proportion of an employee's time was dedicated to a particular grant.

C. ICAP's Lack of an Effective Effort Reporting System Led to Overcharges to Federal Grants

28. As a result of ICAP's lack of an effective effort reporting system, Federal Grants were often charged for work that NYC Non-self-certifiers did not actually perform on the grant. Many NYC Non-self-certifiers had their time charged to Federal Grants they did not work on or had their time inaccurately distributed among the Federal Grants that they did work on. In nearly every case, the principal investigator certified that the effort reports were accurate, even though the employees themselves later stated that the effort reports were inaccurate.

29. For instance, an ICAP Finance Analyst stated that he spent approximately 15-20% of his time on MCAP in fiscal year 2010, but his effort report lists his MCAP effort, and related salary charges, as 85%. In fiscal year 2009, an ICAP Program Officer's entire salary was charged to MCAP, even though the Program Officer did not work solely on MCAP and at least

some of her time should have been charged to the Non-Sponsored Account. In fiscal year 2010, an ICAP Subcontracts Manager's effort report listed her effort as 100% MCAP, but the Subcontracts Manager actually worked on three other grants, in addition to MCAP, that year. The time of many other employees was similarly mischarged.

30. In addition to mischarges, ICAP charged federal grants for time spent on activities that are not chargeable to any federal grants, such as competitive grant proposal writing. An ICAP Grants Manager spent a significant amount of her time writing competitive grant proposals, but her effort report shows that none of her time was charged to the Non-Sponsored Account. All of her time was charged to grants, with as much as 92% of her time charged to MCAP in some years.

31. ICAP's management was well aware of its problems. One ICAP director stated to a colleague in 2009 that effort reports were "notoriously inaccurate" but that he "usually just certif[ies] whatever is listed." Later in 2009, a finance director mused in a communication to another of ICAP's directors that "how we distribute effort among grants is one of the great lingering problems." In 2006, an ICAP director (and a principal investigator for MCAP), stated in an internal memo about a funding dispute between ICAP and Columbia that ICAP was "fortunate...to have large direct cost budgets. But we cannot continue to put inappropriate charges on those budgets to cover the shortfall created by the School's failure to honor its commitment."

FIRST CLAIM

Violations of the False Claims Act: Presenting False Claims for Payment

(31 U.S.C. § 3729(a)(1) (2000), and, as amended, 31 U.S.C. § 3729(a)(1)(A))

32. The United States incorporates by reference paragraphs 1 through 31 above as if fully set forth in this paragraph.

33. The United States seeks relief against Columbia and ICAP under Section 3729(a)(1) of the FCA, 31 U.S.C. § 3729(a)(1) (2000), and, as amended, 31 U.S.C. § 3729(a)(1)(A).

34. As a result of its inadequate effort reporting system and its failure to have a suitable means of verifying that the work of NYC Non-self-certifiers that was allocated to Federal Grants was actually performed, Columbia and ICAP presented false or fraudulent claims for payment or approval in violation of 31 U.S.C. § 3729(a)(1) (2000), and, as amended, 31 U.S.C. § 3729(a)(1)(A).

35. By reason of the false or fraudulent claim that Columbia and ICAP knowingly presented, the United States has been damaged in a substantial amount to be determined at trial, and is entitled to recover treble damages plus a civil monetary penalty for each false claim.

SECOND CLAIM

Violations of the False Claims Act: Use of False Statements

(31 U.S.C. § 3729(a)(2)(2000) and, as amended, 31 U.S.C. § (a)(1)(B)(Supp. 2009))

36. The United States incorporates by reference paragraphs 1 through 31 above as if fully set forth in this paragraph.

37. The United States seeks relief against Columbia and ICAP under Section 3729(a)(2) of the FCA, 31 U.S.C. § 3729(a)(2) and, as amended, 31 U.S.C. § 3729(a)(1)(B) (Supp. 2009).

38. As a result of its inadequate effort reporting system and its failure to have a suitable means of verifying that the work of NYC Non-self-certifiers that was allocated to Federal Grants was actually performed, Columbia and ICAP caused false records or statements to be made that were material to getting false or fraudulent claims paid.

39. By reason of these false records or statements, the United States has been damaged in a substantial amount to be determined at trial and is entitled to recover treble damages plus a civil monetary penalty for each false record or statement.

PRAYER FOR RELIEF

40. WHEREFORE, plaintiff, the United States, requests that judgment be entered in its favor as follows:

(a) On the First and Second Claims for relief (violations of the FCA, 31 U.S.C. §§ 3729(a)(1) and 3729(a)(2) and, as amended, 31 U.S.C. §§ 3729(a)(1)(A) and 3729(a)(1)(B)), a judgment against Columbia and ICAP for treble the United States' damages, in an amount to be determined at trial, plus an \$11,000 penalty for each false claim submitted in violation of the FCA

(b) An award of costs incurred by the United States against Columbia and ICAP pursuant to 31 U.S.C. § 3729(a)(3); and

(c) Such further relief as is proper.

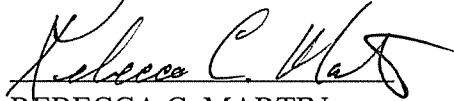
Dated: New York, New York

October 7, 2014

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