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INTRODUCTION

The United States filed a Complaint in Partial Intervention (“Complaint” or “Compl.”) under the False Claims Act (“FCA”) against nine defendants, including three related corporations: Aetna Life Insurance Company, Aetna Inc., and CVS Health Corporation (“CVS Health,” and together the “Aetna entities”). Aetna Life Insurance Company is a subsidiary of Aetna Inc., which is in turn a subsidiary of CVS Pharmacy, Inc., which is a subsidiary of CVS Health. *Id.* ¶ 6, 8. In addition to participating in a joint filing with all Defendants, Dkt. No. 115, CVS Health and Aetna Inc. filed a separate Memorandum in Support of Motion to Dismiss (“CVS Memo.”) asserting that the Complaint failed to state a claim against these corporations. Dkt. No. 117.

The Court should deny CVS Health and Aetna Inc.’s motion. The Complaint alleged in detail that the Aetna entities (1) offered and paid hundreds of millions of dollars in illegal kickbacks to several brokers to induce them to enroll beneficiaries into their Medicare Advantage plans and (2) used those kickbacks to pressure brokers to enroll fewer Medicare beneficiaries with disabilities. Compl. ¶¶ 98–102. The Complaint “allege[d] with particularity the who, what, when, where, and how of the fraud,” *D’Agostino v. ev3, Inc.*, 845 F.3d 1, 10 (1st Cir. 2016), including well-pleaded facts about actions taken by or on behalf of CVS Health and Aetna Inc. Compl. ¶ 777. The Complaint gave CVS Health and Aetna Inc. “fair notice of what the . . . claim is and the grounds upon which it rests.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citation modified).

ARGUMENT

Although a parent corporation is generally not liable for the acts of its subsidiaries, a “corporation is [itself] responsible for the wrongs committed by its agents in the course of its business.” *Mine Workers v. Coronado Coal Co.*, 259 U.S. 344, 395 (1922). Similarly, holding

companies “do not get a pass on liability simply because they are holding companies [and t]here are indeed circumstances in which a parent company that engages in no business operations could nonetheless be held liable for ‘causing’ False Claims Act violations.” *United States ex rel. Bassan v. Omnicare, Inc.*, No. 15-cv-4179, 2025 WL 1591609, at *2 (S.D.N.Y. June 5, 2025) (“*Omnicare P*”) (denying CVS Health’s Motion for Directed Verdict after jury found the company liable for violating the FCA). The Complaint included sufficient well-pleaded facts about CVS Health and Aetna Inc.

I. The Complaint Adequately Pleaded Claims Against CVS Health and Aetna Inc.

The Complaint sufficiently pleaded that Aetna Inc. and CVS Health participated in schemes in which they knowingly made false claims to the United States or made false statements material to such claims. Compl. ¶¶ 378–577, 799–862. The Complaint alleged direct submission of false claims by or on behalf of CVS Health and Aetna Inc. The Complaint alleged that specific named executives (**who**) signed certifications (**what**) on behalf of “CVS Health Corporation” or “Aetna Inc.” (**who**) from 2016 through 2021 (**when**). *Id.* ¶ 777. Each of these certifications to the Centers for Medicare & Medicaid Services (“CMS”) accompanied claims and stated that the organization “hereby requests payment under the [Medicare Advantage] contract, and in doing so, makes the following certifications concerning CMS payments to the Organization” (**what and how**). *Id.* ¶ 776; *see id.* ¶ 794 (“Aetna submitted claims for payment to CMS in the form of enrollments and monthly beneficiary data[.]”). Aetna Inc. and CVS Health submitted these claims through their identified representatives. These attendant certifications are the core false statements in the case—they were false about compliance with the Anti-Kickback Statute (“AKS”) and they were false about compliance with the discrimination provisions—and CVS Health and Aetna Inc. made them multiple times over multiple years. That alone is a sufficient basis on which to deny their motion to dismiss.

Citing no case, Aetna Inc. and CVS Health suggest that, even though the false claims and certifications were made by and on behalf of these companies, it was necessary to also plead whether the signatory was an “employee” of those companies. CVS Memo. at 5. When a person signs on behalf of an entity, it is hard to imagine for pleading purposes why it is also necessary to describe the nature of that person’s employment relationship with the company. Case law does not support that requirement. To the contrary, black letter agency law supports the Government’s reliance on CVS Health’s signature as being made on the corporation’s behalf. RESTATEMENT (THIRD) OF AGENCY §§ 2.03, 3.03, 7.08 (A.L.I. 2006). It is sufficient to allege, as the Complaint did, that these individuals were acting on behalf of each defendant. *E.g., Omnicare I*, 2025 WL 1591609 at *12.

When executives sign certifications to the Government on behalf of an organization and hold themselves out to the Government as authorized representatives of that organization, it is more than plausible that the executives were indeed acting on behalf of that organization. *See* Compl. ¶ 777. But no one reading the Complaint in this case has to speculate about that. As alleged in the Complaint, the signatories of these certifications were required to be the Medicare Advantage Organization’s “chief executive officer (CEO), chief financial officer (CFO), or an individual delegated the authority to sign on behalf of one of these officers, and who reports directly to such officer.” *Id.* ¶ 95. The Complaint was clearly sufficient for alleging CVS Health and Aetna Inc.’s direct role in submitting false claims and certifications year after year to the Government. Indeed, in recent FCA litigation against CVS Health and its subsidiary Omnicare, a court explained that CVS Health could be held (and later was held) liable despite having no employees and “engag[ing] in no business operations” other than owning its subsidiaries, based on the actions of its agent (who was also an employee of a CVS Health subsidiary). *Omnicare I*,

2025 WL 1591609 at *2, *12; *see also id.* at *11 (“[T]he fact that an employee of CVS Pharmacy was tasked with carrying out certain corporate obligations does not mean that the person acted *only* on behalf of CVS Pharmacy.”). The same principle applies here.

In contrast, in another recent FCA case involving CVS Health and a subsidiary, CVS Health was found not liable only after full development of the factual record, including an eight-day bench trial. *See United States ex rel. Behnke v. CVS Caremark Corp.*, No. 14-CV-824, 2025 WL 1758623, at *1 (E.D. Pa. June 25, 2025). That court found that, although “CVS Health Corp. was the signatory on each attestation submitted by [one subsidiary] to CMS . . . [t]his fact is not determinative” because “one of the signatories during the years in question . . . explained that he signed those documents in his role as a [subsidiary] employee.” *Id.* at *48. There is no such testimony here. At minimum, the Government has plausibly alleged that CVS Health and Aetna Inc. made false statements and should be allowed discovery concerning CVS Health and Aetna Inc. prior to any decision regarding dismissal, because “Courts must be sensitive to the fact that application of Rule 9(b) prior to discovery ‘may permit sophisticated defrauders to successfully conceal the details of their fraud.’” *Craftmatic Sec. Litig. v. Kraftsow*, 890 F.2d 628, 645 (3d Cir. 1989) (quoting *Christidis v. Penn. Mortg. Trust*, 717 F.2d 96, 99–100 (3d Cir. 1983)).

As to the Complaint’s FCA claims premised on AKS violations, Defendants assert that the Complaint “fail[ed] to allege that CVS Health Corporation or Aetna Inc. knew those certifications [of enrollment or payment data] were false” and failed to allege that these corporations “had any involvement in the alleged payments” to brokers. CVS Memo. at 6. *First*, knowledge may be alleged generally. Fed. R. Civ. P. 9(b); *see, e.g.*, Compl. ¶ 383 (“Aetna knew that the AKS applied to Medicare Advantage plans and enrollments.”). And where companies made repeated annual representations to the Government, it was at minimum reckless to ignore pervasive misconduct by

“ostrich-like behavior.” *United States v. President & Fellows of Harvard Coll.*, 323 F. Supp. 2d 151, 187 (D. Mass. 2004). *Second*, the Complaint need not allege that CVS Health or Aetna Inc. directly paid any brokers to allege that the corporations made false claims. “[I]t is not the AKS violation itself that renders the claim false. Rather, it is the false representation that there is no AKS violation.” *United States v. Regeneron Pharm., Inc.*, 128 F.4th 324, 333 (1st Cir. 2025).

The Complaint also pleaded that the Aetna entities submitted claims that had been rendered false by unlawful discrimination.¹ Compl. ¶¶ 788–90. Defendants appear to challenge the location in the Complaint of the discussion about the Aetna entities’ certifications and attestations. CVS Memo. at 5–6. The Complaint was clear, however, that “[e]very time that Aetna . . . submitted beneficiary data and attestations while limiting and otherwise discouraging enrollment of beneficiaries with disabilities and while conspiring with the Defendant Brokers to do the same,” the Aetna entities “falsely represented compliance with material statutory, regulatory, and contractual requirements to comply with anti-discrimination laws.” Compl. ¶ 790. That is, when the two named executives submitted and certified monthly or quarterly beneficiary “enrollment and payment” data to CMS specifically on behalf of CVS Health or Aetna Inc., they presented claims that falsely certified that statutory, regulatory, and contractual regulations had been met. Compl. ¶¶ 30, 841, 845–52, 859–61; *cf. Universal Health Servs., Inc. v. United States ex rel. Escobar*, 579 U.S. 176, 181 & 194 (2016).

If any of the Complaint’s references to the collective Aetna entities are viewed as “group pleading,” CVS Memo. at 3, this approach did not violate Rules 8 or 9. When alleged fraud is “perpetrated by sophisticated corporate entities that are related to each other,” a plaintiff “need not

¹ The Government addressed Defendants’ mistaken argument that “individuals who were *not* enrolled” could not be a basis for false claims, CVS Memo. at 5, in greater detail in the Government’s Opposition to Defendants’ Consolidated Motion to Dismiss.

distinguish the specific roles that each entity played” to meet the Rule 9(b) standard. *Gray v. BMW of N. Am., LLC*, No. 13-cv-3417, 2014 WL 4723161, at *2 (D.N.J. Sept. 23, 2014) (addressing fraudulent concealment). At the motion to dismiss stage, “[p]laintiffs cannot be expected to know the exact . . . degree of each Defendant’s involvement” where defendant “entities are intertwined through a complex corporate structure.” *In re Volkswagen Timing Chain Prod. Liab. Litig.*, No. 16-cv-2765, 2017 WL 1902160, at *9 (D.N.J. May 8, 2017). Here, CVS Health maintained a complex web of hundreds of subsidiaries, some eight degrees removed from the parent.²

Defendants’ citations to the contrary involve inapposite situations. *See* CVS Memo. at 4. In *United States v. Lakeway Regional Medical Center*, for example, the complaint’s six counts did “not distinguish between the Defendants even once” where defendants were three individuals and three corporations, creating “confusion.” No. A-19-CV-00945, 2020 WL 6146571, at *2 (W.D. Tex. Feb. 13, 2020). In *United States ex rel. Ahumada v. NISH*, both the relator’s first amended complaint and proposed second amended complaint lumped together various unaffiliated corporations as either “supplier” defendants or “manufacturer” defendants. 756 F.3d 268, 272 (4th Cir. 2014). These two situations are different than enmeshed parent and subsidiary corporations like CVS Health, Aetna Inc., and Aetna Life Insurance Company.

II. Parent and Holding Companies Cannot Hide Behind Subsidiaries

Recent FCA litigation against CVS Health and its subsidiary Omnicare demonstrates the importance of holding each company liable for its role in the misconduct. In April 2025, a jury found that Omnicare submitted more than three million false claims to the Government and that

² Take, for example, the following chain of CVS Health subsidiaries in 2018: CVS Health Corporation → CVS Pharmacy, Inc. → Aetna Inc. → Aetna Life Insurance Company → AHP Holdings, Inc. → Aetna ACO Holdings Inc. → Innovation Health Holdings, LLC → Innovation Health Insurance Company → Innovation Health Plan, Inc. CVS Health, *Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934* (Feb. 28, 2018), Ex. 21-1 (“Subsidiaries of CVS Health Corporation”), <https://perma.cc/WR3C-U39E>.

CVS Health caused more than one million false claims to be submitted. *United States ex rel. Bassan v. Omnicare, Inc.*, No. 15-cv-4179, 2025 WL 1865202, at *1 (S.D.N.Y. July 7, 2025). After the Government “prudently limit[ed] its request for penalties to \$542 million,” CVS Health was “jointly and severally liable with Omnicare for \$164.8 million of the total amount of the statutory penalties imposed” based on shared liability for about one million claims. *Id.* at *2.

CVS Health’s annual revenue exceeds \$372 billion, and in 2024, CVS Health spent \$3 billion to repurchase millions of shares of its own stock. CVS Health, *Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934* (Apr. 4, 2025) at pgs. 1, 67, <https://perma.cc/6LJL-8ENR>. However, two months after entry of this FCA judgment, CVS Health announced that Omnicare had filed for bankruptcy. CVS Health, *Omnicare Initiates Voluntary Chapter 11 Process* (Sept. 22, 2025), <https://perma.cc/ST9V-VHKN>. Absent holding CVS Health liable for its involvement in the misconduct alleged here, CVS Health could reap the financial rewards of massive Government contracts and simply allow (or perhaps order) any of its subsidiaries to restructure when facing liability for significant fraud against the Government.

III. If Necessary, the Government Should Be Granted Leave to Amend Its Complaint

If the Court concludes that Complaint does not satisfy Rule 8(a) or Rule 9(b) as to either CVS Health or Aetna Inc., the Government respectfully requests leave to amend its Complaint. Fed. R. Civ. P. 15(a)(2) (a court “should freely give leave when justice so requires”); *see Amyndas Pharm., S.A. v. Zealand Pharma A/S*, 48 F.4th 18, 39 (1st Cir. 2022).

CONCLUSION

For all the foregoing reasons, Defendants’ motion to dismiss should be denied.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served upon all counsel of record via ECF on October 20, 2025.

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Dated: October 20, 2025