

TABLE OF CONTENTS

INTRODUCTION 1

ARGUMENT 3

I. The Complaint Sufficiently Alleged that the Defendant Brokers
Caused False Claims To Be Submitted 3

 A. Causation Under the FCA Does Not Require Direct
 “Involvement” in the Claim Submission Process 3

 B. Even Under the Defendant Brokers’ Incorrect Standard,
 The Complaint Alleged Causation..... 6

II. The Defendant Brokers All But Ignore Subsection 3729(a)(1)(B)
(Counts IV and V) 8

III. The Complaint Pleaded Conspiracy by the Defendant Brokers 9

CONCLUSION..... 10

TABLE OF AUTHORITIES

Cases

Allison Engine Co. v. United States ex rel. Sanders,
553 U.S. 662 (2008)..... 5

Commonwealth ex rel. Martino-Fleming v. South Bay,
334 F. Supp. 3d 394 (D. Mass. 2018)..... 6

Cook Cnty. v. United States ex rel. Chandler,
538 U.S. 119 (2003)..... 2, 4

Guadalupe-Báez v. Pesquera,
819 F.3d 509 (1st Cir. 2016)..... 2

Mason v. Medline Indus., Inc.,
731 F. Supp. 2d 730 (N.D. Ill. 2010) 6

Murray & Sorenson, Inc. v. United States,
207 F.2d 119 (1st Cir. 1953)..... 4

Scolnick v. United States,
331 F.2d 598 (1st Cir. 1964)..... 4

United States ex rel. Bane v. Breathe Easy Pulmonary Services, Inc.,
597 F. Supp. 2d 1280 (M.D. Fla. 2009)..... 7

United States ex rel. Butler v. Shikara,
748 F. Supp. 3d 1277 (S.D. Fla. 2024) 2, 8

United States ex rel. DeCesare v. Americare In Home Nursing,
757 F. Supp. 2d 573 (E.D. Va. 2010) 7, 8

United States ex rel. Fesenmaier v. Cameron-Ehlen Grp., Inc.,
715 F. Supp. 3d 1133 (D. Minn. 2024)..... 5

United States ex rel. Franklin v. Parke-Davis,
147 F. Supp. 2d 39 (D. Mass. 2001)..... 6

United States ex rel. Hutcheson v. Blackstone Medical, Inc.,
647 F.3d 377 (1st Cir. 2011)..... 3, 4, 5

United States ex rel. Kennedy v. Aventis Pharms., Inc.,
610 F. Supp. 2d 938 (N.D. Ill. 2009) 9

United States ex rel. Lutz v. Berkeley Heartlab, Inc.,
225 F. Supp. 3d 487 (D.S.C. 2016)..... 4

United States ex rel. Marcus v. Hess,
317 U.S. 537 (1943)..... 4

United States ex rel. Martino-Fleming v. South Bay,
No. CV 15-13065-PBS, 2018 WL 4539684 (D. Mass. Sept. 21, 2018)..... 5

United States ex rel. Prose v. Molina Healthcare,
17 F.4th 732 (7th Cir. 2021) 5

United States ex rel. Rost v. Pfizer, Inc.,
507 F.3d 720 (1st Cir. 2007)..... 6

United States ex rel. Schmidt v. Zimmer, Inc.,
386 F.3d 235 (3d Cir. 2004)..... 5

United States ex rel. Schutte v. SuperValu Inc.,
598 U.S. 739 (2023)..... 2

United States ex rel. Sikkenga v. Regence,
472 F.3d 702 (10th Cir. 2006) 5

United States ex rel. Westmoreland v. Amgen, Inc.,
738 F. Supp. 2d 267 (D. Mass. 2010)..... 10

United States v. Bornstein,
423 U.S. 303 (1976)..... 4

United States v. King-Vassel,
728 F.3d 707 (7th Cir. 2013) 9

United States v. President and Fellows of Harvard College,
323 F. Supp. 2d 151 (D. Mass. 2004) 6, 7, 8

United States v. Regeneron Pharm., Inc.,
No. 20-cv-11217, 2023 WL 6296393 (D. Mass. Sept. 27, 2023)..... 4

United States v. Teva Pharm. USA, Inc.,
682 F. Supp. 3d 142 (D. Mass. 2023)..... 4

United States v. Zannino,
895 F.2d 1 (1st Cir. 1990)..... 8

Statutes

31 U.S.C. § 3729(a)(1)(C) 10

31 U.S.C. § 3729(a)(2)..... 10

31 U.S.C. § 3729(b)(2)(A)(ii)..... 8

31 U.S.C. §§ 3729..... 1

31 U.S.C. §§ 3729(a)(1)(A)–(B)..... 1, 3, 8

42 U.S.C. § 1320a-7b..... 1

Regulations

42 C.F.R. § 422.504(i)(3)..... 9

INTRODUCTION

The Government’s Complaint in Partial Intervention (“Complaint” or “Compl.”) detailed the fraudulent schemes by which the Defendant Brokers (eHealth, GoHealth, and SelectQuote) and the Defendant Insurers violated the Anti-Kickback Statute (“AKS”), 42 U.S.C. § 1320a-7b, anti-discrimination laws, and ultimately the False Claims Act (“FCA”), 31 U.S.C. §§ 3729 *et seq.* See Comp. ¶¶ 98–764.¹ Despite the well-pleaded allegations detailing the Defendant Brokers’ integral role in the fraudulent schemes and in causing the submission of false claims to the Centers for Medicare & Medicaid Services (“CMS”), the Defendant Brokers nonetheless argue that they cannot be liable under the FCA unless they “played a role in” the actual submission of claims to the Government. Dkt. No. 116 (“Broker Memo”) at 6. Beyond offering scant explanation for what “play[ing] a role” means, this argument ignores longstanding precedent establishing that defendants who do not directly submit claims (e.g., pharmaceutical companies, medical device manufacturers, or executives) can be liable under the FCA when their conduct naturally and foreseeably caused the submission of false claims or naturally and foreseeably caused the use of a false record or statement material to a false claim. 31 U.S.C. §§ 3729(a)(1)(A)–(B).

Moreover, even if the Court adopted the Defendant Brokers’ proposed limitation on FCA liability, the Complaint sufficiently alleged that the Defendant Brokers “played a role in” the submission of claims to the Government. As the Defendant Brokers recognize, the Complaint alleged that: (1) the Defendant Brokers “help [Medicare] beneficiaries *enroll*” in the Defendant Insurers’ Medicare Advantage plans, Broker Memo. at 1–2; and (2) those enrollments are “claims” under the FCA. Dkt. No. 115 (“Defs. Memo.”) at 32. It is hard to imagine a tighter nexus.

¹ The United States’ Opposition to the Defendants’ Consolidated Motion to Dismiss (“Gov’t. Memo.”), incorporated herein by reference, summarizes these well-pleaded allegations.

In their brief, the Defendant Brokers attempt to distance themselves from the Defendant Insurers and from the claims submitted to CMS by describing themselves as “simply vendors who are paid by the [Defendant Insurers] to market plans, to help beneficiaries enroll, and for other administrative support.” Broker Memo. at 2; *see id.* at 8. These characterizations not only disregard the well-pleaded allegations of the Complaint but also require the Court to make inferences (and even factual leaps) in the Defendants Brokers’ favor. *Cf. Guadalupe-Báez v. Pesquera*, 819 F.3d 509, 514 (1st Cir. 2016). As alleged in the Complaint, the Defendant Brokers are not “simply vendors.” They “wield considerable influence over our nation’s most vulnerable citizens” and they used the value of that influence to solicit and receive bribes in return for steering Medicare beneficiaries to the Defendant Insurers’ Medicare Advantage plans. Compl. at 1. The Defendant Brokers held themselves out as unbiased and claimed to have Medicare beneficiaries’ best interests in mind, but they actually “directed Medicare beneficiaries to the plans offered by insurers that paid them the most money, regardless of the quality or suitability of the insurers’ plans.” *Id.*; *see id.* ¶¶ 69–74. And the Defendant Brokers discriminated against beneficiaries with disabilities to keep illicit bribes flowing from Aetna and Humana. *Id.* at 2.

“Congress wrote [the FCA] expansively, meaning to reach all types of fraud, without qualification, that might result in financial loss to the Government.” *Cook Cnty. v. United States ex rel. Chandler*, 538 U.S. 119, 129 (2003) (quotation omitted). As such, “[a] determination that the FCA covers ‘down-the-chain’ activities of private parties contracting to execute Medicare programs comports with the Supreme Court’s understanding of the intersection between the FCA and other parts of the Medicare Act.” *United States ex rel. Butler v. Shikara*, 748 F. Supp. 3d 1277, 1301 (S.D. Fla. 2024) (citing *United States ex rel. Schutte v. SuperValu Inc.*, 598 U.S. 739, 745 n.1 (2023)). The Court should deny the Defendant Brokers’ motion to dismiss.

ARGUMENT

I. The Complaint Sufficiently Alleged that the Defendant Brokers Caused False Claims To Be Submitted

The Defendant Brokers' brief focuses on causation under subsection 3729(a)(1)(A). They argue that the "causes to be presented" prong requires the Government to plead (and ultimately prove) that the brokers "played a role in [the claims'] submissions" or that they were "involved in submitting th[e] claims." Broker Memo. at 2–3, 6, 8. This standard is not the law. Even if involvement in the claim submission process were required, however, the well-pleaded allegations in the complaint demonstrated that the Defendant Brokers had such involvement. *See* Compl. ¶¶ 116–17, 120–23, 200, 204, 248, 297–01, 378–81, 713–14.

A. Causation Under the FCA Does Not Require Direct "Involvement" in the Claim Submission Process

Controlling First Circuit precedent, *United States ex rel. Hutcheson v. Blackstone Medical, Inc.*, 647 F.3d 377 (1st Cir. 2011), undermines the Defendant Brokers' position, though the Defendant Brokers cite to it only once and make no effort to distinguish it. *See* Broker Memo. at 2–3. In *Blackstone*, a medical device manufacturer allegedly "engaged in a nationwide kickback scheme to induce physicians to use its medical devices in spinal surgeries and . . . knew this scheme would cause physicians and hospitals (unwittingly) to present federal healthcare programs with payment claims that contained material misrepresentations." 647 F.3d at 378. The defendant argued that "an unrelated third party somewhere in the supply chain" cannot cause claims to be false. *Id.* at 389. The First Circuit rejected that argument, explaining that the FCA "makes no distinction between how non-submitting and submitting entities may render the underlying claim or statements false or fraudulent." *Id.* The court looked to longstanding precedent to hold that a non-submitting entity may be liable under the FCA even when the claim-submitter had no knowledge, awareness, or involvement in the falsity or fraud of the non-submitting entity. *Id.* at

390–91 (citing *United States ex rel. Marcus v. Hess*, 317 U.S. 537, 544–45 (1943); *United States v. Bornstein*, 423 U.S. 303, 309 (1976); *Murray & Sorenson, Inc. v. United States*, 207 F.2d 119, 123–24 (1st Cir. 1953); *Scolnick v. United States*, 331 F.2d 598 (1st Cir. 1964)).

In finding that a device manufacturer could “cause” a claim or false statement and so be liable under the FCA, the *Blackstone* court conducted no analysis of whether the defendant was “involved in submitting th[e] claims.” *Cf.* Broker Memo. at 8. Indeed, it is hard to imagine how the device manufacturer could have “played a role in [the] submission[.]” of the hospital’s claims, *id.* at 6: the submitter hospital in that case, unlike the Defendant Insurers here, was an “innocent party,” unaware of the defendants’ alleged misconduct, 647 F.3d at 390; the device manufacturer paid the bribes to physicians, not the submitter hospital; and moreover, the submitter hospital’s false claims were not even for the defendant’s devices specifically but for a set payment based on certain diagnoses. *Id.* at 390, 394. The First Circuit also rejected as “overblown,” *id.* at 391, the very policy considerations (a purported lack of “clear limiting principle,” Broker Memo. at 8) that the Defendant Brokers argue justify their proposed rule. It observed that “in enacting the FCA ‘Congress wrote expansively, meaning ‘to reach all types of fraud, without qualification, that might result in financial loss to the Government’” and “we cannot rewrite statutes.” *Id.* at 391–92 (quoting *Cook Cnty.*, 538 U.S. at 129). Besides, “other means exist to cabin the breadth of the phrase ‘false or fraudulent’ as used in the FCA,” namely scienter and materiality.² *Id.* at 388.

² The Defendant Brokers’ proposed standard also ignores an extensive body of caselaw holding that non-submitting entities may face FCA liability because of their participation in a kickback arrangement that culminated in others’ foreseeable submission of claims. *See, e.g., United States v. Regeneron Pharm., Inc.*, No. 20-cv-11217, 2023 WL 6296393 (D. Mass. Sept. 27, 2023); *United States v. Teva Pharm. USA, Inc.*, 682 F. Supp. 3d 142, 144 (D. Mass. 2023); *United States ex rel. Lutz v. Berkeley Heartlab, Inc.*, 225 F. Supp. 3d 487, 497 & 499 (D.S.C. 2016).

Blackstone makes clear that FCA causation does not require involvement in the claim submission process but rather finds its roots in traditional tort law principles. *See* 647 F.3d at 391–92. Non-submitting defendants, like the Defendant Brokers, may be liable under the FCA for causing others to submit false claims where the defendants are the proximate cause of the false claim. *Id.*; *see also United States ex rel. Sikkenga v. Regence*, 472 F.3d 702, 714 (10th Cir. 2006) (applying “proximate causation”); *United States ex rel. Schmidt v. Zimmer, Inc.*, 386 F.3d 235, 244 (3d Cir. 2004) (“appl[ying] ordinary causation principles from negligence law”). Causes are proximate where they naturally and foreseeably produce the harm in question, directly contribute to the harm without undue attenuation, and constitute a substantial factor such that the defendant should be held responsible for the harm. *See Allison Engine Co. v. United States ex rel. Sanders*, 553 U.S. 662, 672 (2008) (applying “natural, ordinary and reasonable consequences of his conduct” causation analysis (citation omitted)), *abrogated by statute on other ground*; *cf. United States ex rel. Prose v. Molina Healthcare*, 17 F.4th 732, 740 (7th Cir. 2021) (applying proximate causation).

There can be no doubt that, as alleged in the Complaint, “requests for Medicare [payment] would likely result” from Defendant Brokers’ misconduct. *United States ex rel. Fesenmaier v. Cameron-Ehlen Grp., Inc.*, 715 F. Supp. 3d 1133, 1152 (D. Minn. 2024); *see also United States ex rel. Martino-Fleming v. South Bay*, No. CV 15-13065-PBS, 2018 WL 4539684, at *4 (D. Mass. Sept. 21, 2018) (“A defendant may be liable where the submission of false claims by another entity was the foreseeable result of a business practice.”). As the Defendant Brokers concede, the Complaint alleged (at a minimum) that they “marketed[ed] those MAOs’ Medicare Advantage (‘MA’) plans and help[ed] eligible beneficiaries enroll in [MA] plans.” Broker Memo. at 1–2. Medicare, of course, would make capitated payments following each enrollment. *See, e.g., Compl.*

¶¶ 42–44. This was not just foreseeable to the Defendant Brokers, it was the “intended consequence” of the alleged kickback schemes. *United States ex rel. Franklin v. Parke-Davis*, 147 F. Supp. 2d 39, 53 (D. Mass. 2001); *see, e.g.*, Compl. ¶ 104 (Humana sent producer agreement to brokers that explained, “[t]he Company will pay Producer using federal funds it receives in connection with the performance of its obligations under CMS’s contract with the Company [i.e., Humana]”). “If a person knowingly participates in a scheme that, if successful, would ultimately result in the submission of a false claim to the government, he has caused those claims to be submitted.” *Commonwealth ex rel. Martino-Fleming v. South Bay*, 334 F. Supp. 3d 394, 406 (D. Mass. 2018) (citation omitted); *cf. United States ex rel. Rost v. Pfizer, Inc.*, 507 F.3d 720, 732–33 & n.9 (1st Cir. 2007) (pharmaceutical company can “cause” the presentment of false Medicare claims if its marketing practices result in physicians prescribing its drug to Medicare patients); *Mason v. Medline Indus., Inc.*, 731 F. Supp. 2d 730, 740 (N.D. Ill. 2010) (non-submitting defendant “knew the providers would seek reimbursement from the federal government; in fact, [the defendant’s] contracts with providers expressly acknowledged that providers would file claims for government payment”).

B. Even Under the Defendant Brokers’ Incorrect Standard, The Complaint Sufficiently Alleged Causation

Even applying the Defendant Brokers’ incorrect causation standard (i.e., brokers must have “played a role” or been “involved” in the submission of claims), the Complaint’s allegations easily satisfied it. The Defendant Brokers’ principal in-circuit support for their proposed standard is *United States v. President and Fellows of Harvard College*, 323 F. Supp. 2d 151 (D. Mass. 2004). But *Harvard College* predates *Blackstone*, and so the appellate opinion abrogates the earlier district court decision (to the extent they are inconsistent). Also, as another court recognized, *Harvard College* “involved alleged failures” by a non-submitting entity “to prevent [the submitter]

from filing false claims despite knowing those claims to be false.” *United States ex rel. DeCesare v. Americare In Home Nursing*, 757 F. Supp. 2d 573, 588 (E.D. Va. 2010). It did not “announce[] a rule that, for *all* FCA claims (not just ones involving failures to prevent false claims), causation is only established by actions *during* (rather than preceding) the filing [of] a claim.” *Id.* Moreover, *Harvard College* explained that although “[s]ome courts have insisted that the defendant have some role in the claim process[,] . . . most courts agree that the FCA covers ‘indirect mulcting of the government.’” *Harvard Coll.*, 323 F. Supp. 2d at 187 (citation omitted). That court “focused its analysis on the question of *foreseeability*.” *DeCesare*, 757 F. Supp. 2d at 589.

In this case, the Complaint’s allegations demonstrated even greater foreseeability of claims submission. In *Harvard College*, the court found it sufficient that a defendant had seen unrelated invoices or expense reports (which “were not necessarily themselves false claims, and in fact, most probably were not”) because the defendant could foresee that money would eventually be paid by the Government. 323 F. Supp. 2d at 188 & n.31. Here, the Complaint alleged that the Defendant Brokers’ enrollment applications to Medicare Advantage plans were a critical and obligatory part of the “claims process.” *E.g.*, Compl. ¶ 58. After the Defendant Brokers submitted enrollment applications, the Defendant Insurers certified to the “valid enroll[ment]” of these beneficiaries into their plans. *Id.* ¶¶ 96, 782. This situation is unlike, for example, *United States ex rel. Bane v. Breathe Easy Pulmonary Services, Inc.*, where the court found—at summary judgment—that there was only an “attenuated” rather than a “strong and direct causal link between the defendant’s actions and the submission of the false claim.” 597 F. Supp. 2d 1280, 1292 (M.D. Fla. 2009).

As the Defendant Brokers acknowledge between their two memoranda, they “help [Medicare] beneficiaries *enroll*” in the Defendant Insurers’ Medicare Advantage plans, Broker Memo. at 1–2, and these enrollments are “claims” for the purposes of the FCA, Defs. Memo. at

32. *E.g.*, Compl. ¶ 791 (noting that the Defendant Insurers “submitted claims to payment to CMS in the form of enrollments”).³ Given that these are the Defendant Brokers’ own words, they cannot claim there is some “mystery . . . [regarding] what conduct [they] must defend in this case.” *DeCesare*, 757 F. Supp. 2d at 583.

II. The Defendant Brokers All But Ignore Subsection 3729(a)(1)(B) (Counts IV and V)

Citing nothing except for their arguments about submission of claims, Defendant Brokers pronounce in a one-paragraph section that the Complaint failed to allege their “causal role in making, using or submitting any records or statements” or the “particularized connection” between their actions and false statements or records. Broker Memo. at 8–9. Even assuming this cursory argument has been preserved (it has not), it fails. *See United States v. Zannino*, 895 F.2d 1, 17 (1st Cir. 1990) (“[I]ssues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived.”). Subsection 3729(a)(1)(B) “applies even where [a defendant] had no role in the claims process.” *Harvard Coll.*, 323 F. Supp. 2d at 194.

Extensive well-pleaded allegations in the Complaint support that the Defendant Brokers’ misconduct naturally and foreseeably caused the Defendant Insurers to make or use false statements that were material to claims. A purpose of the Defendant Insurers’ bribes was to induce the Defendant Brokers to steer beneficiaries into their Medicare Advantage plans, and Defendant Brokers solicited those bribes in return for the same. *E.g.*, Compl. ¶¶ 98–101, 115, 131, 199, 378, 436. The Defendant Brokers, in turn, knew that the Government prohibited MAOs and brokers from violating the AKS and from discriminating against beneficiaries with disabilities. *E.g.*, *id.* ¶¶ 104 (Humana “producer” contract for brokers), 314, 343. It was, therefore, “eminently

³ At least one court has held that a Medicare Advantage broker’s “prepared beneficiary application to an MAO, which triggers a contractual commission payment pursuant to federal funds the MAO receives from CMS, constitutes a ‘claim’ for payment under the FCA.” *Shikara*, 748 F. Supp. 3d at 1300 (citing 31 U.S.C. § 3729(b)(2)(A)(ii)).

foreseeable” that the Defendant Insurers would make statements and records related to these enrollments and submit them to CMS. *United States v. King-Vassel*, 728 F.3d 707, 715 (7th Cir. 2013); see *United States ex rel. Kennedy v. Aventis Pharms., Inc.*, 610 F. Supp. 2d 938, 943–44 (N.D. Ill. 2009) (noting that a hospital’s inclusion of non-reimbursable charges for off-label drugs on its Medicare forms and cost reports was foreseeable to the drug manufacturer).

The Defendant Brokers make a related argument that they cannot be liable unless they knew the specific language in the Defendant Insurers’ false statements or records to the Government. See Broker Memo. at 6. That is not the law for proximate causation. Like turning a key to start a car, “while most people could not explain every step between key-turn and ignition, the cause-effect relationship is commonly appreciated.” *King-Vassel*, 728 F.3d at 715. Moreover, the Complaint sufficiently alleged not only that the Defendant Brokers knew the Defendant Insurers could not violate the AKS, but also that they were bound by the law. As the Defendant Brokers concede, they were the Defendant Insurers’ agents and were required to “abide by all applicable State and Federal laws, regulations, and requirements.” Broker Memo. at 2; see Compl. ¶ 75; see also 42 C.F.R. § 422.504(i)(3) (requiring brokers to agree that their conduct will be “consistent and comply with the [Medicare Advantage] organization’s contractual obligations” to CMS). The alleged intentional omission of the Defendants Brokers’ enrollment commitments from contracts sufficed to show that they knew that their relationships with the Insurer Defendants must comply with the AKS (in addition to allegations concerning the Defendant Brokers’ acknowledgement of illegality and their employees’ warnings not to put details of their conduct in writing). E.g., Compl. ¶¶ 104, 106–08, 120–23, 139, 297–302, 385, 424, 490, 597.

III. The Complaint Pleaded Conspiracy by the Defendant Brokers

The Government explained conspiracy liability in greater detail in its Consolidated Memo, including as to the Defendant Brokers. Gov’t. Memo. at 51–56. The Defendant Brokers now

argue that the Complaint did not sufficiently allege conspiracy because “the Government has not alleged a single fact suggesting that the [Defendant Brokers] even knew about the data and certificate submissions . . . and therefore could not have conspired with the MAOs to get the claims ‘allowed or paid by the United States.’” Broker Memo. at 9. This argument fails for at least two reasons. *First*, it mistakenly relies on a case that examined the pre-2009 version of the FCA’s conspiracy provision and so addressed the wrong legal standard. *Id.* (citing *United States ex rel. Westmoreland v. Amgen, Inc.*, 738 F. Supp. 2d 267, 272 (D. Mass. 2010)). Since 2009, the FCA has not required that a conspiracy aim to “get the claims” paid by the United States. Broker Memo. at 9; *compare* 31 U.S.C. § 3729(a)(1)(C) (“conspires to commit a violation” of a substantive provision of the FCA), *with* 31 U.S.C. § 3729(a)(2) (2008) (“conspires to defraud the Government *by getting* a false or fraudulent claim allowed or paid” (emphasis added)). *Second*, the Defendant Brokers ignore reality and the Complaint’s allegations when suggesting that, while enrolling many thousands of Medicare beneficiaries into Medicare Advantage plans, the Defendant Brokers somehow did not “know[] about” corresponding claims for payment to Medicare. *See* Broker Memo at 7, 9. As discussed *supra*, this position is untethered to factual allegations in the Complaint (let alone what the Defendants Brokers’ own briefs acknowledge, Broker Memo. at 1–2, Defs. Memo. at 32): the Complaint alleged that Defendant Brokers knew that the enrollments they generated for the Defendant Insurers were the basis of claims for payment to the United States.

CONCLUSION

For the foregoing reasons and for the reasons stated in the United States’ Opposition to the Defendants’ Consolidated Motion to Dismiss, the Court should deny the Defendant Brokers’ bid for dismissal.

Respectfully submitted,

BRETT A. SHUMATE
Assistant Attorney General
Civil Division

LEAH B. FOLEY
United States Attorney

/s/ David G. Miller

Jamie Ann Yavelberg
Edward C. Crooke
David G. Miller
Anna H. Jugo
Diana E. Curtis
Sara B. Hanson
Attorneys, Civil Division
U.S. Department of Justice
175 N Street N.E.
Washington, D.C. 20002
(202) 305-2335
David.G.Miller@usdoj.gov
Anna.H.Jugo@usdoj.gov
Sara.B.Hanson@usdoj.gov
Diana.E.Curtis@usdoj.gov

/s/ Charles B. Weinograd

Charles B. Weinograd
Julien M. Mundele
Hillary Harnett
Assistant United States Attorneys
1 Courthouse Way, Suite 9200
Boston, MA 02210
(617) 748-3100
Charles.Weinograd@usdoj.gov
Julien.Mundele@usdoj.gov
Hillary.Harnett@usdoj.gov

Dated: October 20, 2025

Attorneys for the United States

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.

/s/ Charles B. Weinograd

Charles B. Weinograd

Dated: October 20, 2025