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19 UNITED STATES DISTRICT COURT
20 NORTHERN DISTRICT OF CALIFORNIA
21 SAN FRANCISCO DIVISION

22 UNITED STATES OF AMERICA ex rel.
23 RONDA OSINEK,

24 Plaintiff,

25 v.

26 KAISER PERMANENTE, et al.,

27 Defendants.

) Case No. 3:13-cv-03891-EMC

) **UNITED STATES' MOTION TO CLARIFY**
) **ORDER GRANTING DEFENDANTS' MOTION**
) **TO DISMISS RELATOR OSINEK'S FIRST**
) **AMENDED COMPLAINT (ECF NO. 224);**
) ~~**PROPOSED**~~ **ORDER**

INTRODUCTION

1
2 The United States, as the real party in interest, respectfully requests that the Court issue an Order
3 clarifying the dismissal of Relator Ronda Osinek's First Amended Complaint ("FAC"). On November
4 14, 2022, the Court entered an Order dismissing with prejudice Relator's FAC to the extent that
5 Relator's FAC includes any claims on which the United States did not intervene. ECF No. 224. The
6 United States respectfully requests that the Court clarify that the dismissal is without prejudice to the
7 United States.

DISCUSSION

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9 A decision by the United States not to intervene in a *qui tam* False Claims Act ("FCA") action or
10 (as here) to intervene only in part in a *qui tam* FCA action does not amount to an admission that any
11 non-intervened claims lack merit. *See, e.g., United States ex rel. Williams v. Bell Helicopter Textron*
12 *Inc.*, 417 F.3d 450, 455 (5th Cir. 2005); *United States ex rel. Ormsby v. Sutter Health*, 444 F. Supp. 3d
13 1010, 1077 (N.D. Cal. 2020). Rather, the FCA allows the United States to decline to intervene for a
14 variety of reasons, and therefore expressly provides the United States with the opportunity to later
15 intervene in a previously declined matter for good cause. 31 U.S.C. § 3730(c)(3). Consequently, where
16 a court grants a defendant's motion to dismiss a relator's complaint in a *qui tam* FCA action, such
17 dismissals are routinely without prejudice to the United States. *See, e.g., United States ex re. Newsham*
18 *v. Lockheed Missiles & Space Co., Inc.*, 190 F.3d 963, 967 (9th Cir. 1999) (dismissal of relator's
19 complaint on motion to dismiss was with prejudice to relator and without prejudice to the United States);
20 *United States ex rel. Campie v. Gilead Scis., Inc.*, No C-11-0941 EMC, 2015 WL 106255, at *18 (N.D.
21 Cal. Jan. 7, 2015) (Chen, J.) (dismissal of relator's complaint on motion to dismiss was without
22 prejudice to the United States). The Court's reasons for dismissing Relator's FAC were not based on the
23 merits of any intervened or non-intervened claim, and thus it is appropriate for the dismissal of Relator's
24 FAC to be without prejudice to the United States with respect to any intervened or non-intervened claim.
25 *Accord* ECF No. 229 (entering judgment in the related *Arefi*, *Stein*, and *Bicocca* cases and specifying
26 that judgment is without prejudice to the United States).

CONCLUSION

27
28 For the foregoing reasons, the United States respectfully requests that the Court enter an Order

1 clarifying that the dismissal of Relator's FAC is without prejudice to the United States. A proposed
2 order is attached.

3
4 DATED: November 16, 2022

Respectfully submitted,

5 BRIAN M. BOYNTON
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7 United States Attorney

8 *s/Shiwon Choe*

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~~PROPOSED~~ ORDER

The Court hereby clarifies its Order Granting Defendants' Motion to Dismiss Osinek's First Amended Complaint, ECF No. 224, that dismissal is without prejudice to the United States.

IT IS SO ORDERED.

DATED: November 16, , 2022



HON. EDWARD M. CHEN
United States District Judge

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