NOT FOR PUBLICATION

FILED

AUG 19 2026

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

United States of America ex. rel. NARESHA MOORE, formerly known as Jane Doe Number One; United States of America ex. rel BEATA DAMAVANDI, formerly known as Jane Doe Number Two,

Plaintiffs - Appellants,

UNITED STATES OF AMERICA, ex rel Jane Doe Number One and Jane Doe Number Two; STATE OF ARKANSAS, ex rel Jane Doe Number One and Jane Doe Number Two; STATE OF CALIFORNIA, ex rel Jane Doe Number One and Jane Doe Number Two; STATE OF COLORADO, ex rel Jane Doe Number One and Jane Doe Number Two; STATE OF CONNECTICUT, ex rel Jane Doe Number One and Jane Doe Number Two; STATE OF DELAWARE, ex rel Jane Doe Number One and Jane Doe Number Two; STATE OF FLORIDA, ex rel Jane Doe Number One and Jane Doe Number Two; STATE OF GEORGIA, ex rel Jane Doe Number One and Jane Doe Number Two; STATE OF HAWAII, ex rel Jane Doe Number One and Jane Doe Number Two; STATE OF ILLINOIS, ex rel Jane Doe Number One and Jane Doe Number Two; STATE OF

No. 24-5569

D.C. No.
2:18-cv-09368-JWH-MRW

MEMORANDUM*

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

INDIANA, ex rel Jane Doe Number One and Jane Doe Number Two; STATE OF IOWA, ex rel Jane Doe Number One and Jane Doe Number Two; STATE OF LOUISIANA, ex rel Jane Doe Number One and Jane Doe Number Two; STATE OF MARYLAND, ex rel Jane Doe Number One and Jane Doe Number Two; STATE OF MASSACHUSETTS, ex rel Jane Doe Number One and Jane Doe Number Two; STATE OF MICHIGAN, ex rel Jane Doe Number One and Jane Doe Number Two; STATE OF MINNESOTA, ex rel Jane Doe Number One and Jane Doe Number Two; STATE OF MISSOURI, ex rel Jane Doe Number One and Jane Doe Number Two; STATE OF MONTANA, ex rel Jane Doe Number One and Jane Doe Number Two; STATE OF NEVADA, ex rel Jane Doe Number One and Jane Doe Number Two; STATE OF NEW JERSEY, ex rel Jane Doe Number One and Jane Doe Number Two; STATE OF NEW MEXICO, ex rel Jane Doe Number One and Jane Doe Number Two; STATE OF NEW YORK, ex rel Jane Doe Number One and Jane Doe Number Two; STATE OF NORTH CAROLINA, ex rel Jane Doe Number One and Jane Doe Number Two; STATE OF OKLAHOMA, ex rel Jane Doe Number One and Jane Doe Number Two; STATE OF RHODE ISLAND, ex rel Jane Doe Number One and Jane Doe Number Two; STATE OF TENNESSEE, ex rel Jane Doe Number One and Jane Doe Number Two; STATE OF TEXAS, ex rel Jane Doe Number One and Jane Doe Number Two; STATE OF VERMONT, ex rel Jane Doe Number One and Jane Doe Number Two; STATE OF VIRGINIA, ex rel Jane Doe Number One and Jane Doe Number Two; STATE OF WASHINGTON, ex rel Jane Doe Number One and Jane Doe Number Two; DISTRICT OF COLUMBIA, ex rel Jane Doe Number One and Jane Doe Number Two,

Plaintiffs - Appellees,

v.

REGENERON PHARMACEUTICALS, INC.; REGENERON HEALTHCARE SOLUTIONS, INC.; SANOFI-AVENTIS U.S. LLC,

Defendants - Appellees.

Appeal from the United States District Court
for the Central District of California
John W. Holcomb, District Judge, Presiding

Argued and Submitted November 18, 2025
Pasadena, California

Before: BYBEE, LEE, and DE ALBA, Circuit Judges.
Partial Dissent by Judge LEE.

Plaintiffs-Relators Naresha Moore and Beata Damavandi ("Relators") appeal the district court's orders dismissing their first amended complaint. We have jurisdiction under 28 U.S.C. § 1291, and we review the grant of a motion to dismiss de novo. *United States v. Allergan, Inc*., 46 F.4th 991, 996 (9th Cir. 2022). For the reasons discussed below, we affirm in part, reverse in part, vacate in part, and remand in part.

1. The district court erred in dismissing Relators' claims against Regeneron Pharmaceuticals, Inc. and Regeneron Healthcare Solutions, Inc. (jointly, "Regeneron") under the public disclosure bar. The False Claims Act (FCA) provides that courts "shall dismiss" an FCA suit "if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed" through certain channels unless the plaintiff is "an original source of the information." 31 U.S.C. § 3730(e)(4). The bar "seeks to strike a balance between 'encourag[ing] suits by whistle-blowers with genuinely valuable information, while discouraging litigation by plaintiffs who have no significant information of their own to contribute.'" *Allergan*, 46 F.4th at 994 (citation omitted). "Whether a particular disclosure triggers the public disclosure bar is a mixed question of law and fact that we review de novo." *United States ex rel. Mateski v. Raytheon Co.*, 816 F.3d 565, 569 (9th Cir. 2016).

The publicly disclosed information in this case consists of high-level transactional data showing that Regeneron made payments to physicians, sometimes specifying that certain payments were made for things like "Food and Beverage" or "Travel and Lodging." But those data reveal only "a piece of the puzzle"; they do not clearly show the "full picture" of the allegedly fraudulent scheme, which is filled in by Relators' allegations about Regeneron's internal business operations and the substructure underlying those payments. *Silbersher v. Valeant Pharms. Int'l, Inc.*, 89 F.4th 1154, 1168 (9th Cir. 2024). For example, one could not glean from the mere fact that payments were made that Regeneron frequently deviated, without justification, from its own tiered system for assigning fair-market value to physician payments, or that reports from both an internal Regeneron audit and an external consulting firm concluded that Regeneron may "be inappropriately compensat[ing]" doctors. Relators further add to the public disclosure that Regeneron used scorecards to track its return on investment in doctors, that it dropped one doctor when his prescription volume went down, and that it capitulated to one doctor's threat to cancel a speaker event if Regeneron did not pay to stay him in a luxury resort. Nor could one determine from the fact that Regeneron paid doctors certain sums that the programs for which those payments were made were sham programs or that some of them never actually occurred.

Put simply, the existence of the payments may have been public prior to Relators' lawsuit, but all the most pertinent details surrounding those payments—those that constitute the alleged fraud and indicate Regeneron's intent to unlawfully induce referrals—were not. *See United States v. Hong*, 938 F.3d 1040, 1047 (9th Cir. 2019) (concluding that "'one purpose of the payment' [must] be to induce future referrals" (citation omitted)). And without those additional details, the public disclosure of payments was not sufficient to "put the government on notice to investigate the alleged fraud before [the relators] filed [their] complaint." *United*

States ex rel. Solis v. Millennium Pharms., Inc., 885 F.3d 623, 627 (9th Cir. 2018). Accordingly, the public disclosure bar does not apply to Relators' claims against Regeneron.

2. In the alternative, Regeneron argues that the district court improperly denied its motion to dismiss Relators' FCA allegations for failure to state a claim. Relators' FCA claims are premised on alleged violations of the Anti-Kickback Statute (AKS), 42 U.S.C. § 1320a-7b(g). To plead a violation of the AKS, a plaintiff must plausibly allege that a defendant "knowingly and willfully offer[ed] or pa[id] any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind to any person to induce" the purchase or provision of a federally reimbursed good or service. 42 U.S.C. § 1320a-7b(b)(2). "[M]ere encouragement" does not qualify as inducement for purposes of the AKS; Relators must plausibly allege that Regeneron offered renumeration with the intent to exert "undue influence" "over the reason or judgment of another." *United States v. Schena*, 142 F.4th 1217, 1224 (9th Cir. 2025) (internal quotation marks and citation omitted). However, the AKS "requires only that one purpose of the payment be to induce future referrals, even if the payments were also intended to compensate for professional services." *United States v. Hong*, 938 F.3d 1040, 1048 (9th Cir. 2019) (internal quotation marks and citation omitted).

Because Relators' FCA claims sound in fraud, to survive a motion to dismiss, Relators' allegations must also satisfy Rule 9(b)'s particularity requirement. *See Ebeid ex rel. U.S. v. Lungwitz*, 616 F.3d 993, 998 (9th Cir. 2010). In other words, Relators must identify "'the who, what, when, where, and how of the misconduct charged,' as well as 'what is false or misleading about [the purportedly fraudulent] statement, and why it is false.'" *United States ex rel. Cafasso v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1055 (9th Cir. 2011) (quoting *Lungwitz*, 616 F.3d at 998).

Relators' complaint is rife with factual allegations pleaded with sufficient particularity to survive Regeneron's motion to dismiss. Relators identify specific examples of multiple doctors across various states to whom Regeneron allegedly made direct payments to induce referrals. Relators also allege that many of these doctors were paid at rates far above fair market value without justification. For example, Regeneron allegedly paid some doctors to stay at luxury hotels, while another doctor was reimbursed for a first-class plane ticket, both in violation of Regeneron's own written policies. Relators even allege that some doctors were paid $10,595.10 for educational events that never occurred. *See Hong*, 938 F.3d at 1049 (concluding that the payment of "sums for which no actual service was performed" constitutes unlawful renumeration under the AKS). And as we made clear in *Schena*, "[i]f a payment is made directly to a person who is making the referral, such as a doctor, the payment induces the referral *by the very fact of the payment itself*" and "is by definition unlawful under [the AKS]." 142 F.4th at 1223–24 (emphasis added).

In short, Relators' allegations are sufficient to have put Regeneron on "notice of the particular misconduct which is alleged to constitute the fraud charged so that [it] can defend against the charge and not just deny that [it] ha[s] done anything wrong." *United States ex rel. Anita Silingo v. WellPoint, Inc.*, 904 F.3d 667, 677 (9th Cir. 2018) (citation omitted). Relators have thus pleaded their FCA claims against Regeneron with sufficient particularity to survive its motion to dismiss, and the district court did not err in so ruling.

3. The district court properly dismissed Relators' FCA conspiracy claims against Regeneron. The FCA imposes liability on those who "conspire[] to commit a violation of" one of its provisions. 31 U.S.C. § 3729(a)(1)(C). To be sure, Relators' complaint contains allegations of *co-promotion agreements* between Sanofi and Regeneron. But Relators never plead with any particularity that Regeneron and Sanofi agreed to do anything other than jointly market certain products. *See Swartz v. KPMG LLP*, 476 F.3d 756, 765 (9th Cir. 2007 ("Rule 9(b) imposes heightened pleading requirements where 'the object of the conspiracy is fraudulent.'" (citation omitted)). Relators' claims essentially amount to "an allegation of parallel conduct [between Regeneron and Sanofi] and a bare assertion of conspiracy." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556 (2007). Without

any allegations regarding "the particulars of when, where, or how the alleged conspiracy occurred," Relators' conspiracy claim fails to satisfy Rule 9(b). *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003); *see also United States v. United Healthcare Ins. Co.*, 848 F.3d 1161, 1180 (9th Cir. 2016) ("Broad allegations that include no particularized supporting detail do not suffice.").

4. The district court properly dismissed Relators' claims against Sanofi-Aventis U.S., LLC ("Sanofi") under the public disclosure bar. Relators allege throughout their complaint that "Regeneron and Sanofi" engaged in a certain course of conduct. But beyond the already public information that Sanofi paid certain doctors certain sums, Relators bring no "genuinely new and material information" of Sanofi's role in the alleged fraud to the table. *Mateski*, 816 F.3d at 579. Indeed, none of the non-public allegations against Regeneron contains any particularized allegations against Sanofi. This is unsurprising because Relators are former *Regeneron* employees—nowhere in their complaint do they indicate that they possessed any insider information as to *Sanofi*. Nor do they allege how they could have come into possession of any such information. While Relators may have overcome the public disclosure bar as to Regeneron, they do not appear to have "significant information of their own to contribute" as to Sanofi. *Mateski*, 816 F.3d at 570.

5. In light of the above, we vacate the district court's order declining to exercise supplemental jurisdiction over the remaining[1] state-law claims against Regeneron. The district court declined to exercise supplemental jurisdiction because no federal claims remained after the court's public disclosure bar rulings. But because we conclude that Relators' FCA claims against Regeneron are to be reinstated, the district court should reevaluate on remand whether it would be appropriate to exercise supplemental jurisdiction over the remaining state-law claims.

AFFIRMED IN PART; REVERSED IN PART; VACATED IN PART; REMANDED IN PART.[2]

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[1] As Regeneron points out, Relators never challenged the district court's dismissal of their claims under the California Insurance Frauds Prevention Act and the Illinois Insurance Claims Fraud Prevention Act, so those claims are forfeited.

[2] Each party shall bear its own costs on appeal. Fed. R. App. P. 39(a)(4).

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Moore, et al. v. Regeneron Pharms. et al., Case No. 24-5569

LEE, Circuit Judge, dissenting in part:

This case demonstrates that what appears unseemly is not always unlawful. The Anti-Kickback Statute (AKS) is a federal criminal statute that prohibits exchanging things of value (kickbacks) for referring patients or otherwise generating federal healthcare business. 42 U.S.C. §§ 1320a-7b(b)(1)(A)). Relators in this qui tam action under the False Claims Act, 31 U.S.C. § 3729, claim that Regeneron Pharmaceuticals (among other things) unlawfully offered "sham" educational programs with free lunches at physicians' offices, paid doctors to participate in seminars at desirable locales, and violated an internal company policy in providing above fair-market-value benefits. In return for these benefits, the physicians allegedly prescribed the defendants' prescription drugs to their patients.

I respectfully dissent in part because I believe these allegations fall short of stating a plausible claim under the AKS.[1] For one thing, most of them consist of vague language without concrete examples. Further, the data showing a correlation between pharmaceutical companies' payments and increased prescription volume is just that—a correlation only. Indeed, scientific evidence suggests that the prescribed drugs were effective in treating eye ailments, high cholesterol, arthritis, and eczema.

[1] I agree with the majority's ruling that the conspiracy claim against Regeneron and all the claims against Sanofi should be dismissed.

To violate the AKS, the allegations must go further—they must show that the exchange amounted to *undue influence.* Relators have failed to do so. At most, they show that pharmaceutical companies and physicians have a cozy relationship. But that is not illegal, even if it may seem distasteful. Nor is this type of business practice uncommon in other industries. Take the legal field for example. E-discovery companies and other legal vendors offer similar "educational" seminars with free lunches to law firms. They often even give free tickets to coveted concerts or prime seats at, say, a Yankees or Mets game.[2] And law firms do the same with their clients or prospective ones—partners lavish them with fancy dinners, box suites, and other enticements.

The ultimate goal of pharmaceutical companies, law firms, or legal vendors is the same—they want more business. But that does not automatically amount to a quid-pro-quo arrangement or an "undue influence." They use these methods so that their product or service will be in their clients' front of mind when they make decisions and to educate their clients on latest developments. Perhaps offering some of the more extravagant benefits may seem a bit much, especially in the medical context, but I do not believe it is unlawful under the AKS.

* * * *

[2] Admittedly, having to attend the latter may be more punishment than benefit these days.

The AKS prohibits "knowingly and willfully soliciting or receiving any remuneration (including any kickback, bribe, or rebate) for referring an individual to a person for the furnishing or arranging of any item or service for which payment may be made in whole or in part under a [f]ederal health care program," such as Medicare. *United States v. Hong*, 938 F.3d 1040, 1047 (9th Cir. 2019) (quoting 42 U.S.C. §§ 1320a-7b(b)(1)(A)) (cleaned up).

A violation of the AKS requires inducement. As far as inducement goes, "mere encouragement would not violate the statute." *United States v. Schena*, 142 F.4th 1217, 1224 (9th Cir. 2025) *cert. denied*, 146 S. Ct. 1824 (2026), (quoting *Hanlester Network v. Shalala*, 51 F.3d 1390, 1398 (9th Cir. 1995) (using AKS interpretations to interpret the Eliminating Kickbacks in Recovery Act)). Instead, it "connotes an intent to exercise influence over the reason or judgment of another." *Id.* In other words, it "require[s] undue influence." *Id.*

For a Rule 12(b)(6) motion to dismiss, we evaluate whether the factual allegations, together with all reasonable inferences, state a plausible claim for relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). And in fraud cases, the plaintiff must also meet the higher "particularity" burden under Rule 9. Fed. R. Civ. P. 9(b). To satisfy this requirement, a pleading must identify "the who, what, when, where, and how of the misconduct charged," and "what is false or misleading about the purportedly fraudulent statement, and why it is false." *United States ex rel. Cafasso* *v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1055 (9th Cir. 2011) (citation omitted) (alterations adopted) (applying it to False Claims Act claim).

Relators' allegations fall into one of two broad categories: 1) publicly available information and 2) internal company workings.

For the first category, Relators submit data showing alleged causal relationships between physician payments and prescription volume. The publicly available information does not plausibly allege a fraudulent scheme. The data merely indicate a positive correlation between payments to physicians and prescription volume in some instances. But correlation does not equate to causation, and thus the data stops short of plausibly alleging a causal relationship or an "undue influence." *Hanlester Network,* 51 F.3d at 1399 ("The fact that a large number of referrals resulted in the potential for a high return on investment, or that the practical effect of low referral rates was failure for the labs, is insufficient to prove that appellants offered or paid remuneration to induce referrals.").

Because the allegations regarding payments and prescription volume alone do not raise an inference of illegality, "inside information" is necessary to connect the dots and bring Relators' theory over the line to plausibility. But they fail to do so. The allegations about how the defendants carried out the scheme internally paint it with a broad brush—they speak in vague terms and fail to elaborate with factual details. For example, Realtors allege that the companies "marr[ied] sales and compliance, while giving the power to sales" and that sales representatives "were given budgets for, and pressured to provide, free catered lunches to doctor offices with no legitimate business need or educational purpose." But these allegations consist of vague language without defining or using examples to illustrate the terms and phrases. There is no detail describing what "pressured" means or why an educational presentation had "no legitimate business need or educational purpose." These allegations are insufficient under Rule 9. *See Bly-Magee v. California*, 236 F.3d 1014, 1019 (9th Cir. 2001) ("[M]ere conclusory allegations of fraud are insufficient.") (citation omitted)).

Understandably, the majority does not predicate its analysis on these vague allegations but instead hangs its hat on a handful of other allegations: (i) alleged exceptions to increase pay rates beyond company-deemed fair market value without justification, including reimbursements for stays at "luxury" hotels (and one first-class plane ticket), in violation of Regeneron's policies; and (ii) a payment of $10,595.10 to doctors for services that never occurred.

These allegations would have more merit—if Relators provided more details. For the alleged payment for services that never occurred, the majority is correct that such an allegation could theoretically be per se unlawful because payments that are purely "gifts" are considered remuneration. But the allegation lacks any detail whatsoever about the "who, what, when, where and how." *Cafasso*, 637 F.3d at 1055 (citation omitted). What exactly are these "services" that never occurred? Who were the doctors that were paid for such non-existent services? When were the services supposed to have occurred? Without those details, defendants are left to guess what incidents Relators are referring to. *See United States ex rel. Anita Silingo v. WellPoint, Inc*., 904 F.3d 667, 676–77 (9th Cir. 2018) (explaining that allegations must provide adequate notice to defendants so they may be able to defend against them); *see id*. (quoting *Bly-Magee*, 236 F.3d at 1018) (one of the purposes of Rule 9 is to prevent plaintiffs from "filing [] complaints as a pretext for the discovery of unknown wrongs," thereby avoiding imposing "enormous social and economic costs" "upon the court, the parties[,] and society[,] absent some factual basis").

The allegations of exceptions to pay rates and reimbursements in violation of Regeneron's own policies suffer from a more fundamental problem. They do not contain the missing step that takes the allegations from mere *encouragement* to *undue influence*. The practice may show a beneficial relationship for both parties, but without more, that is not enough to establish inducement. *See Hanlester Network,* 51 F.3d at 1399. No precedent suggests that exceptions to fair market value compensation or a company's violations of its own policies are enough to show inducement. *Cf. Schena*, 142 F.4th at 1226 (finding inducement where the defendant "directed his marketers to mislead and deceive doctors about Arrayit's blood testing services, in an effort to cause them to make referrals to his lab"); *Hanlester Network*, 51 F.3d at 1399 (finding inducement where employee "implied that eligibility to purchase shares depended on an agreement to refer program-related business; told prospective limited partners that the number of shares they would be permitted to purchase . . . would depend on the volume of business that they referred to the labs; and stated that partners who did not refer business would be pressured to leave the partnerships"). There is good reason that no such precedent exists. These allegations hinge on the "Regeneron-assigned FMV rate," and violations of Regeneron's own policies. If a company's internal policies were the benchmark to assess inducement, companies could simply change their policies to help insulate themselves from AKS violations.

In sum, these facts may reflect an unseemly business practice but not fraud. *Eclectic Props. E., LLC v. Marcus & Millichap Co.*, 751 F.3d 990 (9th Cir. 2014) ("[W]hen faced with two possible explanations, one of which can be true and one of which results in liability, plaintiffs cannot offer allegations that are merely consistent with their favored explanation but are also consistent with the alternative explanation.") (citation omitted).

I respectfully dissent in part.