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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA, EX
REL. STEVEN MATESKI,

Plaintiff,

v.

RAYTHEON CO.,

Defendant.

Case No. 2:06-cv-3614-ODW(FMOx)

**ORDER RE RAYTHEON'S
MOTIONS TO DISMISS [96], [98]**

I. INTRODUCTION

The False Claims Act allows any citizen with proprietary information of fraud against the United States Government to bring a civil action on behalf of the United States. 31 U.S.C. § 3730. But there are jurisdictional limitations in place to prevent lawsuits from opportunistic plaintiffs, and a court must dismiss any claim that lies outside of these limitations. One such limitation is the public-disclosure bar, which eliminates jurisdiction in cases where the Government has declined to intervene and the *qui tam* complaint is based upon publicly disclosed allegations or transactions. 31 U.S.C. § 3730(e)(4)(A). The Court finds that this case is subject to the public-disclosure bar, and for that reason, the Court **GRANTS** Raytheon's Motion to Dismiss for lack of subject-matter jurisdiction.¹ (ECF No. 96.)

¹ Having carefully considered the papers filed in support of and in opposition to this Motion, the Court finds the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; L.R. 7-15.

1 **II. BACKGROUND**

2 Defendant Raytheon Co. was subcontracted to develop a weather sensor called
3 the Visible Infrared Imaging Radiometer Suite (“VIIRS”) for the United States
4 Government. (Fourth Am. Compl. (“FAC”) ¶ 17.) This sensor was part of the
5 National Polar-Orbiting Operational Environmental Satellite System (“NPOESS”), a
6 satellite system that collects meteorological, oceanographic, environmental, and
7 climactic data. (FAC ¶¶ 10, 11.) An Integrated Program Office (“IPO”) consisting of
8 the Department of Defense, NASA, and the National Oceanic and Atmospheric
9 Administration, managed NPOESS as a joint program. (FAC ¶ 12.) Until 2010,
10 oversight of the NPOESS program was assigned to an executive committee composed
11 of top officials from each of the three IPO agencies. (FAC ¶ 13.) The NPOESS
12 program was cancelled in 2010 because of delays, technical underperformance, and
13 cost overruns. (FAC ¶ 15.)

14 Relator Steven Mateski began working for Raytheon in 1997. (FAC ¶ 3.) He
15 was assigned to work on VIIRS for a short period of time while employed at
16 Raytheon. (*Id.*) During that period, Mateski was asked to perform work under
17 circumstances that he considered non-protocol: working without engineering drawings
18 or planning books; and using prohibited materials. (*See e.g.*, FAC 23.)

19 Mateski filed his initial *qui tam* complaint on June 9, 2006. After about six
20 years, the United States notified the Court that it declines to intervene. (ECF No. 78.)
21 On September 5, 2012, Mateski filed his Fourth Amended Complaint. (ECF No. 88.)
22 He alleges that from 2002 to at least 2012, Raytheon knowingly and recklessly
23 submitted 48 false claims to the United States and received payments for those claims
24 in the sum of approximately one billion dollars. (FAC ¶ 71.) In response, Raytheon
25 filed two Motions to Dismiss: the first under Federal Rule of Civil Procedure 12(b)(1);
26 the second under Rules 8, 9, 10, and 12. (ECF Nos. 96, 98.) The Court first turns to
27 the Motion to Dismiss under Rule 12(b)(1) for lack of subject-matter jurisdiction.

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III. SUBJECT-MATTER JURISDICTION

A. Legal Standard

Federal courts are courts of limited jurisdiction, having subject-matter jurisdiction only over matters authorized by the Constitution and Congress. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Plaintiffs bear the burden of establishing that subject-matter jurisdiction exists. *Id.* If a court finds that it lacks jurisdiction, the court must dismiss the action. Fed. R. Civ. P. 12(h)(3).

A Rule 12(b)(1) motion for lack of subject-matter jurisdiction may be brought as either a facial or factual attack. *Wolfe v. Strankman*, 392 F.3d 358, 362 (9th Cir. 2004). In a facial attack, the challenger asserts that the allegations contained in a complaint are insufficient on their face to invoke federal jurisdiction. *Id.* But, in a factual attack, the challenger disputes the truth of the allegations that, by themselves, would otherwise invoke federal jurisdiction. *Id.*

Further, in a Rule 12(b)(1) motion, the well-pleaded facts alleged in the complaint are taken as true. *Orsay v. U.S. Dep’t of Justice*, 289 F.3d 1125, 1127 (9th Cir. 2002). But the court is not restricted to the face of the pleadings—the court “may review any evidence, such as affidavits and testimony, to resolve factual disputes concerning the existence of jurisdiction.” *McCarthy v. United States*, 850 F.2d 558, 560 (9th Cir. 1988).

B. Discussion

The False Claims Act (“FCA”) deprives a court of jurisdiction over any *qui tam* action that is based on allegations or transactions already publicly disclosed:

No court shall have jurisdiction over an action under this section based upon the public disclosure of allegations or transactions . . . unless the action is brought by the Attorney General or the person bringing the action is an original source of the information. 31 U.S.C. § 3730(e)(4)(A).²

² The cited statute reflects the FCA prior to the 2010 amendment. This older version controls since this suit was filed in 2006. *See Gonzalez v. Planned Parenthood of L.A.*, 392 F. App’x 524, 526 (9th Cir. 2010).

1 Under this statute, a court must first determine whether there has been a prior public
2 disclosure; and if so, whether the relator is an original source within the meaning of
3 § 3730(e)(4)(B). *A-1 Ambulance Serv., Inc. v. California*, 202 F.3d 1238, 1243 (9th
4 Cir. 2000).

5 1. *The Raytheon allegations and transactions were publicly disclosed when*
6 *Mateski filed his Complaint.*

7 A public disclosure may occur in three ways: (1) in a criminal, civil, or
8 administrative hearing, (2) in a congressional or administrative report, or (3) in the
9 news media. *United States ex rel. Meyer v. Horizon Health Corp.*, 565 F.3d 1195,
10 1200 (9th Cir. 2009).

11 In his complaint, Mateski makes 48 allegations that fall into three categories:
12 cost overruns; design, engineering, and manufacturing defects; and mismanagement.
13 Throughout his 134-page FAC, Mateski makes general allegations of recklessness and
14 fraud by Raytheon. Additionally, Mateski litters his FAC with minutia—references to
15 various specifications and part numbers—alleging that Raytheon manufactured
16 subassemblies without complying with applicable requirements and specifications.

17 In support of its Motion, Raytheon submitted 64 exhibits, each of which are
18 public disclosures and point to a number of issues encountered in the VIIRS program.
19 (RJN Exs. 1–64.) Many of these disclosures predate the Complaint, which was filed
20 on June 9, 2006.

21 Mateski asserts that Raytheon generalizes his claims and that the public
22 disclosures lack the particularity of his allegations. (Opp’n 7.) That may be so, but
23 there is no particularity requirement for a suit to fall under the public disclosure bar—
24 the phrase “allegations or transactions” is construed broadly. *Schindler Elevator*
25 *Corp. v. United States ex rel. Kirk*, 131 S. Ct. 1885, 1891 (2011). A court is barred
26 from hearing a *qui tam* suit when the complaint contains allegations “substantially
27 similar” to previous public disclosures. *Meyer*, 565 F.3d at 1199; *United States ex rel.*
28 *Biddle v. Bd. of Trs. of Leland Stanford, Jr. Univ.*, 161 F.3d 533, 535 (9th Cir. 1998)

1 (“[I]f at the time a relator files a *qui tam* complaint, the allegations or transactions of
2 the complaint have been publicly disclosed, then the allegations are ‘based upon’ the
3 publicly disclosed information.”). “Based upon” does not mean “solely based
4 upon”—a *qui tam* action partly based upon publicly disclosed information is deemed
5 to fall within the jurisdictional bar of 31 U.S.C. § 3730(e)(4)(A). *Glaser v. Wound*
6 *Care Consultants, Inc.*, 570 F.3d 907, 920–21 (7th Cir. 2009).

7 In *Wang*, an engineer brought suit against his former employer FMC Corp.,
8 accusing it of defrauding the United States Government by its poor performance on
9 several defense projects for the manufacturing of military vehicles. *United States ex*
10 *rel. Wang v. FMC Corp.*, 975 F.2d 1412, 1414 (9th Cir. 1992). Though information
11 regarding the vehicles’ defective transmission systems had been made public in the
12 news media, the relator in *Wang* alleged that his account provided more details of the
13 fraud. *Id.* at 1417. The Ninth Circuit found that the allegations were nevertheless
14 publicly disclosed, holding that while there were “a few factual assertions never
15 before publicly disclosed,” these facts merely support what the public already knew
16 concerning the defective transmission systems. *Id.*

17 Here, Mateski’s allegations point to cost overruns, noncompliance with VIIRS
18 specifications, manufacturing and engineering defects, and overall mismanagement of
19 the VIIRS program. But these issues were already publicly known—they were
20 addressed extensively in government hearings, administrative reports, and news
21 media. *See* Mot. 10–22. For example, Mateski alleges that Raytheon improperly used
22 pure tin plated wire on a J7 Power Connector. (FAC ¶ 28.) Allegedly, pure tin is a
23 prohibited material for use in a VIIRS sensor under specification PS154640-132. (*Id.*)
24 The Court notes that this minor detail may not have been publicly disclosed, and the
25 Court has not found any reference to this specific noncompliance in Raytheon’s
26 exhibits. Nevertheless, the public disclosures that broadly discuss design
27 noncompliance and manufacturing defects cover this claim and others like it.

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1 For instance, in an audit report in May 2006, the U.S. Department of Commerce
2 reported that “the internal processes of the VIIRS subcontractor were inadequate and
3 not being followed, and the subcontractor’s management communication and
4 oversight were poor.” (RJN Ex. 61, at 19.) The report also states that Raytheon
5 received “excessive award fees for a problem-plagued program.” (RJN Ex. 61, at 2.)
6 Though not alleged in detail, it was publicly known that there was rampant
7 mismanagement, deviations from protocol, and other problems with VIIRS.

8 Further, public disclosures need not detail information underlying allegations or
9 transactions so long as they supply enough information for the United States to pursue
10 an investigation. *See United States v. Alcan Elec. & Eng’g, Inc.*, 197 F.3d 1014, 1019
11 (9th Cir. 1999). Transcripts and reports from administrative hearings show that there
12 was ample information available to initiate an investigation. And in fact,
13 investigations were pursued. In 2005, a Congressional committee reported that after
14 the VIIRS problems were discovered, the IPO had onsite presence at Raytheon and
15 became more involved in the day-to-day work. (RJN Ex. 55, at 31.) The IPO also
16 initiated two independent reviews of VIIRS. (*Id.*) At a separate hearing, the
17 committee reported that the problems on the VIIRS program were being remedied:

18 Let me give you a specific example from the VIIRS program, a sensor
19 that has experienced significant technical, cost and schedule problems.
20 Northrop Grumman intervened and re-located 10 specialists to be onsite
21 at the subcontractor’s facility to proactively assist them through the
22 design and development process. The team has comprehensively
23 reviewed their processes and their detailed design and has implemented
24 corrective action across the subcontractor’s engineering, manufacturing,
25 quality, and management disciplines. (RJN Ex. 57, at 18.)

26 The public disclosures show not only that the problems with the VIIRS program
27 were known, but that the United States Government was busy trying to rectify the
28 problems. And while the public disclosures do not discuss the problems on the VIIRS
program in the level of detail that Mateski does in his FAC, the allegations are
nonetheless the same for the purposes of 31 U.S.C. § 3730(e)(4)(A). Mateski’s FAC

1 and the public disclosures all point to systematic technical and management problems
2 on the VIIRS program.

3 The Court therefore concludes that all of the allegations in the FAC were
4 publicly disclosed for the purposes of this jurisdictional analysis.

5 2. *Mateski is not the original source of the public disclosures*

6 Although the claims against Raytheon are based upon publicly disclosed
7 information, this Court would still have jurisdiction if Mateski was the “original
8 source” of such information. 31 U.S.C. § 3730(e)(4)(A). An “original source” is an
9 individual who has direct and independent knowledge of the information upon which
10 the allegations are based. *Meyer*, 565 F.3d at 1201. Further, the individual must have
11 voluntarily provided the information to the government before the filing of the *qui tam*
12 action, and must have had a hand in the public disclosure.³ *Id.*

13 First, Mateski offers nothing to show that he had a hand in the public
14 disclosure. There is nothing suggesting that he directly or indirectly was a source to
15 the entity that publicly disclosed the allegations upon which this suit is based.
16 Republishing publicly disclosed allegations is insufficient—a whistleblower sounds
17 the alarm; he does not echo it. *Wang*, 975 F.2d at 1419.

18 Second, Mateski avers that he is the original source because he had direct and
19 independent knowledge of the alleged fraudulent activity. But a relator does not have
20 independent knowledge of information by mere virtue of the fact that the charged
21 company employed him during the time the activity took place. *See United States ex*
22 *rel. Bly-Magee v. Premo*, 470 F.3d 914, 917 (9th Cir. 2006). In contrast, the Ninth
23 Circuit held that a relator had “direct and independent” knowledge of the problem
24 because “he saw [it] with his own eyes,” and his knowledge was “unmediated by
25 anything but [his] own labor.” *Wang*, 975 F.2d at 1417.

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27 ³ The Court notes a split in the Courts of Appeals—some other circuits do not limit “original
28 *United States ex rel. Kirk*, 131 S. Ct. 1885, 1895 n.8 (2011). Mateski does not address this hand-in-
the-public-disclosure requirement.

1 In the FAC, Mateski makes generalized statements of cost overruns and
2 technical ineptitude, but fails to allege how he happened upon such information, or
3 how he remembers instances of fraudulent activity with such accuracy. Additionally,
4 Mateski claims that Raytheon had engaged in fraud from 2002 to at least 2012. But
5 Mateski was only assigned to work on VIIRS from 2005 through 2007, logging 2,128
6 hours in 2005, 1,247 hours in 2006, and 103 hours in 2007. (Till Decl. ¶ 4.) During
7 that time, he worked on VIIRS as a Principal Production Planner/Material Control
8 Specialist and as a Senior Technical Support Engineer. (*Id.*) His responsibilities
9 consisted of creating and reviewing assembly instructions and engineering drawings.
10 (*Id.*) There is no indication that he was involved with billing, management, or high-
11 level technical oversight.

12 While it is conceivable that Mateski had direct and independent knowledge of
13 the various technical failures and noncompliance issues mentioned in his FAC, it
14 appears unlikely that he would have direct knowledge of fraud or recklessness
15 committed by Raytheon in the VIIRS program. Mateski can only allege that the
16 various technical failures and noncompliance issues were part of a defrauding scheme,
17 or that they were examples of systematic recklessness. But Mateski does not actually
18 know whether Raytheon committed fraud or was reckless in the VIIRS program. In
19 other words, Mateski jumps to the conclusion that because there were a number of
20 problems in the VIIRS program, there must have been fraud or recklessness. This
21 bald conclusion does not satisfy the direct and independent knowledge requirement.

22 And third, the relator must have provided the information to the Government
23 prior to filing the *qui tam* action. *Meyer*, 565 F.3d at 1201. Mateski offers nothing
24 suggesting that happened. To the contrary, it appears that Mateski's first contact with
25 the Government was on July 14, 2006, when he briefed government officials about the
26 claims he alleged in his *qui tam* complaint. (Mateski Decl. 3.) And it is irrelevant that
27 Mateski's disclosure resulted in this meetings with government officials and initiated
28 additional government investigations. Merely providing a lead that triggers an

1 investigation does not qualify one as an original source. *United States ex rel. Barajas*
2 *v. Northrop Corp.*, 5 F.3d 407, 410 (9th Cir. 1993).

3 Although Mateski offers some technical details concerning problems on the
4 VIIRS program, he does not qualify as the original source of these allegations under
5 31 U.S.C. § 3730(e)(4)(A). It appears that Mateski offered these technical details to
6 bolster his claims, but they are insufficient to remedy the fact that he is not the
7 original source.

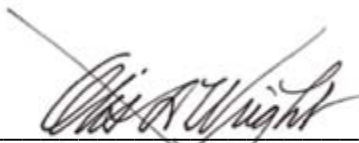
8 **IV. CONCLUSION**

9 For the reasons discussed above, the public-disclosure bar applies and
10 Raytheon's Motion to Dismiss for lack of subject-matter jurisdiction is **GRANTED**.
11 (ECF No. 96.) The Court finds it would be futile to grant Mateski leave to amend
12 because not only is this his Fourth Amended Complaint, the deficiencies discussed
13 herein cannot be remedied.

14 Raytheon's Motion to Dismiss on other grounds is **DENIED AS MOOT**.
15 (ECF No. 98.) The Clerk of Court shall close this case.

16 **IT IS SO ORDERED.**

17 February 26, 2013

18 

19 _____
20 **OTIS D. WRIGHT, II**
21 **UNITED STATES DISTRICT JUDGE**