

## Important Lessons from the Second FCA Settlement Involving Alleged False Statements by PPP Borrower and Its CEO

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On April 21, 2021, the Department of Justice (“DOJ”) and the U.S. Attorney’s Office for the Eastern District of California announced a second settlement resolving alleged violations of the False Claims Act (“FCA”) based on false statements made by a company and its chief executive officer in connection with the company’s loan application under the Paycheck Protection Program (“PPP”) of the Coronavirus Aid, Relief, and Economic Security (CARES) Act.<sup>1</sup> This announcement comes only a few months after the DOJ announced an FCA settlement with Slidebelts, Inc. and its CEO resolving claims of alleged wrongdoing in connection with the PPP, discussed in our earlier article on the subject.<sup>2</sup>

According to the DOJ’s press release and the settlement agreement, Sandeep S. Walia, M.D., a professional medical corporation (“Walia PMC”), received two PPP loans from two different lenders despite the fact that during the first round of PPP loans, borrowers were not permitted to receive more than one loan. Indeed, just a month after Walia PMC received its first PPP loan of approximately \$280,000, its CEO, Dr. Sandeep Walia, executed a note for a second PPP loan of \$430,000. Both loan applications and the related notes were submitted and signed by Dr. Walia. In the second PPP loan application, Dr. Walia certified that Walia PMC “has not and will not receive another loan” and that it “has not received another [PPP] loan.” As a result of these false statements, Walia PMC obtained its second PPP loan. Significantly, the borrower had not sought forgiveness of the PPP loans. Regardless, the government alleged that the borrower’s false statements caused a false claim to be made to the Small Business Administration for processing fees. The DOJ contends in the settlement agreement that “Walia PMC and Dr. Walia knew, deliberately ignored, or recklessly disregarded that Walia PMC was not entitled to a second PPP loan.” Walia PMC and Dr. Walia agreed to pay a combined \$70,000 in damages and penalties and repay the second PPP loan of \$430,000, with interest, to resolve the allegations that they knowingly made false statements to obtain a PPP loan in violation of the FCA.

### Key Takeaways:

- **Expect increasing use of the FCA as the government continues efforts to recover emergency relief funds.** The Walia PMC settlement, coming shortly after the Slidebelts settlement, demonstrates that the DOJ is likely to make increasing use of the FCA as a powerful tool to ferret out fraud against pandemic-related government programs, as discussed in our earlier articles.<sup>3</sup> In announcing this most recent FCA settlement, the DOJ stated

that it and its partners at the SBA “will use all of the tools at [their] disposal, including civil fraud statutes, to recover funds for federal programs intended to help those in need during this national emergency.”

- **The DOJ will scrutinize federal loans regardless of the amount.** The government will pursue enforcement actions, even for loans that are for relatively small amounts, such as those at issue in these first two FCA settlements related to the PPP. Increasingly vigorous enforcement actions can be expected as the government scrutinizes the larger loans under the PPP, as well as those under other CARES Act programs, including the Main Street Lending Program.
- **Repaying a PPP loan will not shield a borrower from potential FCA liability.** The government will pursue claims where there is wrongdoing, regardless of whether the borrower seeks loan forgiveness, as was the case in both the Slidebelts and the Walia PMC matters.
- **The government will bring actions where program eligibility requirements and limitations are deliberately ignored or recklessly disregarded.** Thus, it remains critical that borrowers develop a thorough understanding of all such requirements and limitations and abide by them, as the consequences of not doing so could be catastrophic and could trigger treble damages, statutory penalties, and in some cases, even criminal liability.
- **Individuals will be held accountable.** In both the Slidebelts and the Walia PMC cases, the government held each borrower’s CEO responsible, making clear that individuals who knowingly submit and certify false statements will be held accountable for wrongdoing.
- **It is essential to be proactive and take affirmative steps to minimize the risk of FCA liability.** Both the organization and the individuals responsible for preparing and submitting applications for pandemic relief funds should review program eligibility requirements carefully and ensure compliance. Proactive efforts in this regard, as well as prompt remediation where issues are discovered, will go a long way to avoiding bigger problems down the road.

If you have additional questions or need further assistance, please reach out to **Suzanne Jaffe Bloom**, (Co-Chair, White Collar, Regulatory Defense & Investigations), **Cristina Calvar** (Partner, White Collar, Regulatory Defense & Investigations), or your Winston & Strawn relationship attorney.

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[1] The DOJ press release is available here: <https://www.justice.gov/usao-edca/pr/bakersfield-medical-practice-agrees-resolve-false-claims-act-allegations-involving>. The settlement agreement entered into by the DOJ, Walia PMC, and Dr. Walia is available here: <https://www.justice.gov/usao-edca/press-release/file/1388591/download>. See also 85 Fed. Reg. 28013.

[2] “DOJ Announces First Settlement to Resolve Alleged FCA Violations by a PPP Borrower and Its CEO,” Jan. 22, 2021, available at <https://www.mondaq.com/unitedstates/insolvencybankruptcy/1028784/doj-announces-first-settlement-to-resolve-alleged-fca-violations-by-a-ppp-borrower-and-its-ceo> & <https://www.winston.com/en/thought-leadership/doj-announces-first-settlement-to-resolve-alleged-fca-violations-by-a-ppp-borrower-and-its-ceo.html>

[3] “Mitigating FCA Liability Risks From Covid-19 Relief Programs,” *Bloomberg Law*, May 6, 2020, available at <https://www.winston.com/images/content/2/0/v2/204436/MitigatingFCALiabilityRisksECO49129.pdf>; “7 False Claims Act Enforcement Trends To Watch,” *Law360*, Feb. 15, 2021, available at <https://www.law360.com/employment-authority/articles/1352593/7-false-claims-act-enforcement-trends-to-watch>.

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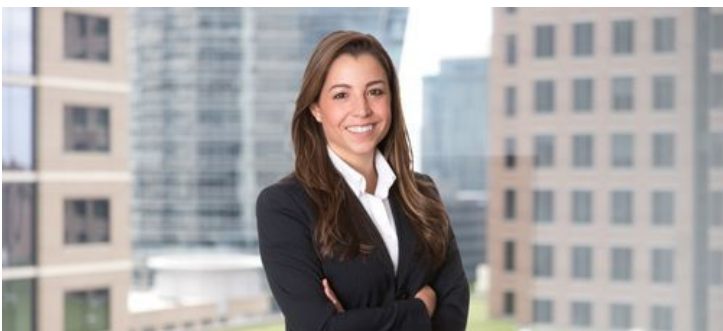
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