IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION ONE

THE STATE OF CALIFORNIA, BY AND THROUGH CALIFORNIA INSURANCE COMMISSIONER, RICARDO LARA, et al., Plaintiffs and Appellants, vs. **ENCINO HOSPITAL MEDICAL CENTER, et al.,** Defendants and Respondents.	No. B302426 (Sup. Ct. No. BC641254)

Los Angeles Superior Court
Case No. BC641254 (Dept. 69)
William F. Fahey, Judge

BRIEF OF *AMICUS CURIAE* TAXPAYERS AGAINST FRAUD EDUCATION FUND IN SUPPORT OF APPELLANTS THE STATE OF CALIFORNIA AND RELATOR DR. MARY LYNN RAPIER

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

There are no interested entities or persons that must be listed in this certificate under rule 8.208.

Dated: March 21, 2022

By: */s/ Valerie Brender*

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STATEMENT OF INTEREST

Taxpayers Against Fraud Education Fund ("TAFEF") is a nonprofit, public interest organization dedicated to combating fraud against the government and protecting public resources through public-private partnerships. TAFEF is committed to preserving effective anti-fraud legislation at the federal and state levels. The organization has worked to educate the public and the legal community about the *qui tam* provisions of the False Claims Act ("FCA"), has participated in litigation as *amicus curiae*, and has provided testimony to Congress about ways to improve whistleblower laws. TAFEF is the 501(c)(3) arm of Taxpayers Against Fraud, which was founded in 1986. TAFEF is supported by whistleblowers and their counsel, and funded by membership dues and foundation grants.

TAFEF has a strong interest in ensuring the proper and consistent interpretation and application of all whistleblower laws, including California's Insurance Frauds Prevention Act. In particular, TAFEF's interest in this appeal is to ensure that the California Insurance Frauds Prevention Act is interpreted broadly consistent with its remedial purposes, and that the *qui tam* provision within it is interpreted to effectuate the public/private partnership that the California legislature intended.

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INTRODUCTION

The California Insurance Frauds Prevention Act (Cal. Ins. Code § 1871 *et seq.*, the "IFPA") is a remedial act designed to protect the public and root out insurance fraud. It is a *qui tam* statute whereby private whistleblowers known as relators – like Dr. Mary Lynn Rapier in this case – can initiate a lawsuit and alert the government of potential fraud. The government then investigates and decides if it wants to intervene – which the State of California has done in this case – or let the relator proceed on his or her own. In an intervened *qui tam* case, the relator and the government work together to prosecute their claims against the defendants.

The IFPA must be broadly construed in light of its remedial purpose. Further, given the similar purpose and nature of the *qui tam* statutes on which it was modeled – namely, the protection of the public with the help of whistleblowers – it is appropriate to look to those statutes, including the Federal False Claims Act (31 U.S.C. § 3729 *et seq.*, the "FCA"), for guidance in interpreting the IFPA. Indeed, the language of the IFPA substantively mirrors the language of the FCA in key respects. The legislatures enacting these *qui tam* statutes share the common goals of protecting the public and stopping fraud, and FCA guidance is important to interpreting the IFPA.

Unfortunately, at every step in this litigation, the trial court took an extremely narrow view of the IFPA, ignoring the purpose and intent of the statute. The first section of this amicus brief discusses why the court's approach to the statute was in error, and why the IFPA should be afforded the same broad interpretation that courts provide similar *qui tam* statutes like the FCA. Then, the next two sections of this brief detail some (but not all) of the rulings in the trial court that stand in stark contrast to established *qui tam* jurisprudence. The first of these rulings is that the trial court paradoxically applied IFPA's "public disclosure bar" – a bar intended to protect the government from having to share *qui tam* recoveries with undeserving relators – to strike some of the government's own claims in this case. The second of these rulings is the trial court's determination that there is no right to a jury trial under the IFPA. Both of these rulings were in error, and should be reversed in light of the purposes of the IFPA and consistent with the interpretation of similar *qui tam* statutes. The final section of this brief addresses Respondents" argument that a relator cannot pursue claims or theories that the government chooses not to advance. Even after the government intervenes in a *qui tam* action, the relator still has the right to litigate and advance arguments, subject to certain inapplicable limitations.

ARGUMENT

I. THE IFPA SHOULD BE AFFORDED THE SAME BROAD INTERPRETATION AS THE FCA IS AFFORDED UNDER SETTLED LAW.

Qui tam statutes like the IFPA[1] and the FCA are broadly construed. They are remedial statutes designed to protect the public and recover damages caused by fraud. They enable private citizens to act as whistleblowers to alert the government to fraud and to assist the government in prosecuting that fraud. *See, e.g., People ex rel. State Farm Mutual Automobile Ins. Co. v. Rubin* (2021) 72 Cal.App.5th 753, 762, review filed (Jan. 24, 2022) (*Rubin*) ("To assist in the fight against insurance fraud, the IFPA contains a *qui tam* provision empowering interested persons to file lawsuits on behalf of the government against perpetrators of insurance fraud.") *People ex rel. Alzayat v. Hebb* (2017) 18 Cal.App.5th 801, 828 (*Alzayat*) ("Civil statutes enacted for the protection of the public [like the IFPA] are to be construed broadly in favor of their protective purpose."). To the extent that the trial court narrowly construed the IFPA, that was error.

A. Background of the IFPA

The IFPA aims to tackle insurance fraud perpetrated against the people of California. *See State of California ex rel. Nee v. Unumprovident Corp.* (2006) 140 Cal.App.4th 442, 448;

[1] The IFPA "creates a *qui tam* action." *People ex rel. Allstate Insurance Co. v. Muhyeldin* (2003) 112 Cal.App.4th 604, 608.

People ex rel. Allstate Insurance Co. v. Weitzman (2003) 107 Cal.App.4th 534, 546–548 (*Weitzman*). Indeed, the California Legislature explicitly singled out health insurance fraud as a "particular problem" for which the IFPA was needed: "Although there are no precise figures, it is believed that fraudulent activities account for billions of dollars annually in added health care costs nationally. Health care fraud causes losses in premium dollars and increases health care costs unnecessarily." California Insurance Code Section 1871(h).

The IFPA is a remedial statute, intended by the California legislature to protect the public. *Alzayat*, *supra*, 18 Cal.App.5th at page 828; *see also* California Insurance Code Section 1871.7(c) (the IFPA's civil penalties "are intended to be remedial rather than punitive"). As a remedial statute, it must be broadly construed. *Alzayat*, *supra*, 18 Cal.App.5th at page 828 ("Civil statutes enacted for the protection of the public [like the IFPA] are to be construed broadly in favor of their protective purpose."). Accordingly, a narrow interpretation of "a remedial action under the IFPA" is disfavored; instead, courts should broadly interpret it in order to serve its purpose of protecting the public. *Id.*

B. Background of the FCA

The FCA's broad coverage of frauds committed against recipients of federal funds is confirmed by its purpose, plain language, structure, and legislative history. Congress enacted the

FCA in 1863 to enlist private persons (called "*qui tam* relators") to assist the government in ferreting out fraud by authorizing these persons to file suit in the name of the government. Sen. Rep. No. 99-345 (1986), at *10-11. Through the FCA, Congress rewards successful relators with a share of the recovery. *Id.* Since its enactment in 1863, the FCA has been the government's primary tool for ensuring that federal funds are not misused or diverted from their intended purpose, thereby protecting the public fisc. Congress ensured that the FCA would extend broadly to frauds involving federal funds by imposing liability for claims submitted to recipients of federal funds as long as "any portion" of the funds requested or demanded comes from the federal government. (31 U.S.C. § 3729(b).) Congress could have chosen to impose a more restrictive requirement, such as requiring that at least half (or even all) of the funds requested come from the federal government, but it did not do so.

This language was the product of extensive consideration and revision by Congress. For instance, initially, the statute did not define the term "claim." In 1968, the Supreme Court examined the history and purpose of the FCA, and concluded that "claim" must be given an expansive reading: "In the various contexts in which questions of the proper construction of the Act have been presented, the Court has consistently refused to accept a rigid, restrictive reading, even at the time when the statute

imposed criminal sanctions as well as civil." *United States v. Neifert-White Co.* (1968) 390 U.S. 228, 232.

In 1986, after extensive study and hearings, Congress confirmed broad interpretations of the FCA like the one in *Neifert-White* and determined that the amendments to the FCA were necessary to address, *inter alia*, courts' interpretations of the statute's provisions that had narrowed the statute's reach and limited its effectiveness. *See, e.g.*, Sen. Rep. No. 99-345, at *2, 4 (noting that the "growing pervasiveness of fraud necessitates modernization" of the FCA and "restrictive court interpretations of the act have emerged which tend to thwart the effectiveness of the statute" and have led to dismissal of meritorious cases). Among the changes adopted in 1986, Congress added a definition for the term "claim," to clarify that the FCA encompasses requests for funds submitted to recipients of funds from federally funded contracts and programs. Congress further amended the term in 2009 to make even more explicit that a person who submits a claim to a recipient of federal funds is subject to liability for fraud even if they do not submit a claim directly to the government. (Pub.L. No. 111-21, § 4 (May 20, 2009), 123 Stat. 1617, 1622; Sen. Rep. No. 111-10, at *12-13.) The evolution of the definition of "claim" in the FCA from the broad construction afforded by reviewing courts, including the Supreme

Court of the United States, and codified by Congress exemplifies the broad reach of the statute overall.

C. The IFPA Should Be Broadly Construed Like the FCA

"[T]he IFPA and FCA share a similar design and purpose. They are *qui tam* statutes designed to supplement government enforcement to uncover and prosecute fraudulent claims." *Rubin*, *supra*, 72 Cal.App.5th at page 770[2] As such, courts should give the IFPA the same broad, remedial interpretation that they give the FCA, and guidance pertaining to the FCA is equally applicable to claims under the IFPA. *E.g.*, *id.* ("Given the relatedness of these statutes, it is appropriate here to consider

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[2] In large part, the IFPA is modeled after the California False Claims Act ("CFCA"), *see, e.g.*, *State ex rel. Wilson v. Superior Court* (2014) 227 Cal.App.4th 579, 596, as modified on denial of rehg. (July 25, 2014) (*Wilson)* (the enforcement mechanism in the IFPA is "modeled on those of the False Claims Act, Gov. Code, § 12650 et seq."). The CFCA, in turn, is modeled after the FCA, and is likewise broadly construed. *See, e.g.*, *San Francisco Unified School Dist. ex rel. Contreras v. Laidlaw Transit, Inc*. (2010) 182 Cal.App.4th 438, 446, as modified on denial of rehg. (Mar. 25, 2010) ("The Legislature designed the CFCA 'to prevent fraud on the public treasury,' and it 'should be given the broadest possible construction consistent with that purpose.' In other words, the CFCA 'must be construed broadly so as to give the widest possible coverage and effect to the prohibitions and remedies it provides.' The CFCA is intended 'to supplement governmental efforts to identify and prosecute fraudulent claims made against state and local governmental entities.' Given the 'very close similarity' of the CFCA to the federal False Claims Act (federal FCA) (31 U.S.C. § 3729 et seq.), 'it is appropriate to turn to federal cases for guidance in interpreting the [CFCA].'") (internal citations omitted).

authority construing the FCA's first-to-file rule."); *Weitzman*, *supra*, 107 Cal.App.4th at page 564 ("we follow federal precedent with respect to the general purpose of the [public disclosure] jurisdictional bar…"); *United States v. Crescendo Bioscience, Inc.* (N.D. Cal., May 23, 2020, No. 16-cv-02043-TSH) 2020 WL 2614959, at *11 ("Many of the specific objections Defendants make vis-à-vis the IFPA claims… mirror objections Defendants made in relation to the FCA claims and thus are unavailing for the reasons already explained above.")

Accordingly, consistent with the plain language of the IFPA's and FCA's structure, legislative history, and purpose, as well as the Supreme Court's admonition against reading the FCA restrictively, and general jurisprudence that remedial laws should not be applied narrowly, the Court should apply the IFPA broadly.

The trial court here narrowly construed the IFPA, seemingly at every turn. As this brief discusses below, the trial court narrowly interpreted the reach of the IFPA by applying the public disclosure bar against claims by the government (*see* Trial Court's June 10, 2019 Order on Motions at p. 3) and by holding there is no right to a jury trial under the IFPA. In addition, it held that the statute only applies to insurers regulated by the Department of Insurance (*see* Trial Court's June 10, 2019 Order on Motions at p. 4) even though the text of the IFPA contains no

such restriction and prohibits fraud against all private insurers (*see, e.g.*, Cal. Ins. Code § 1871.7(b)). The trial court held that there must be "cash consideration to make [a] referral unlawful" under the IFPA (*see* Trial Court's September 6, 2019 Final Statement of Decision at p. 16), even though this Court has previously held that only an "item or service of value" is required to make certain referrals unlawful. *See Wilson*, *supra*, 227 Cal.App.4th at page 593. The court also declined to interpret the term "steerer" since there was no "clear definition" it could locate in the IFPA or reported decisions (*see* Trial Court's September 6, 2019 Final Statement of Decision at p. 15), even though there is reported authority interpreting that term (*see Barron v. Board of Dental Examiners of Cal.* (1930) 109 Cal.App. 382, 385) that could, and should, be applied to this case. Finally, the court mistakenly applied the "doctrine of lenity" (*see* Trial Court's September 6, 2019 Final Statement of Decision at p. 14), thereby improperly narrowing the reach of the remedial IFPA. Viewed through a proper lens for a *qui tam* action, *e.g.*, giving the IFPA a broad construction consistent with its remedial purposes, these rulings should be reversed.

II. THE IFPA'S PUBLIC DISCLOSURE BAR DOES NOT APPLY TO THE GOVERNMENT.

The IFPA's public disclosure bar, like the federal and state FCA provisions that it is modeled on, exists to protect the government's interest by ensuring that the government will only

be required to share any recovery in *qui tam* litigation with meritorious relators. The FCA's public disclosure bar "strike[s] a balance between encouraging private persons to root out fraud and stifling parasitic lawsuits[.]" *See Graham County Soil and Water Conservation Dist. v. United States ex rel. Wilson* (2010) 559 U.S. 280, 295 (*Graham County*). Since the provision exists to *protect* the government's interest, it is illogical that it could be used as justification for *dismissing* the government's claims.

Yet that is what the trial court did, on an improper reading of the statute. As explained in the State of California's Opening Brief, the IFPA was amended in 1999. *See* State of California's Opening Brief at pages 62-63. The 1999 amendment's changes included making the California Insurance Commissioner the entity charged with enforcing the IFPA, instead of the California Attorney General. *Id.* However, not all sections of the IFPA were properly updated to reflect that change, and the statute's public disclosure bar still refers to the "Attorney General" instead of the "Insurance Commissioner." The trial court improperly held this drafting oversight has massive consequences, concluding that the public disclosure bar protects only the specific interests of the California Attorney General, and not the California government at large or the Insurance Commissioner. (*See* June 10, 2019 Order on Motions at p. 3.) As a result, the trial court then concluded that since it was the California Insurance

Commissioner who intervened, and not the California Attorney General, the public disclosure bar could and did apply. *Id.* Of course, after the IFPA's 1999 amendment, the California Attorney General lacks the authority to intervene on behalf of the government; instead, that power rests with the Insurance Commissioner or a district attorney. The public disclosure bar must be construed to protect those entities' interests, as it is illogical for the bar to protect only the Attorney General, and not the government at large nor even the entities who prosecute claims under it. The trial court's narrow and hyper-technical reading of the public disclosure bar, favoring form over substance, was in error.

The language in the IFPA's public disclosure bar "is not unique," and "[s]imilar language" is found in the FCA's public disclosure bar. *Weitzman*, *supra*, 107 Cal.App.4th at page 552. A comparison of the two public disclosure bars shows the striking similarities between the two statutory provisions. The IFPA's public disclosure bar provides:

> No court shall have jurisdiction over an action under this section based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing in a legislative or administrative report, hearing, audit, or investigation, or from the news media, unless the action is brought by the Attorney General or the person bringing

> the action is an original source of the information.

California Insurance Code Section 1871.7(h)(2)(A). The California language largely mirrors the language of the FCA's public disclosure bar:

> The court shall dismiss an action or claim under this section, unless opposed by the Government, if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed—(i) in a Federal criminal, civil, or administrative hearing in which the Government or its agent is a party; (ii) in a congressional, Government Accountability Office, or other Federal report, hearing, audit, or investigation; or (iii) from the news media, unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.

31 United States Code Section 3730(e)(4)(A). Both statutes thus provide that publicly disclosed information cannot be the basis of a *qui tam* action, unless prosecuted by the government or by an original source.

It makes perfect sense that the language of the two bars is substantively the same, as the bars were enacted for the same purpose: to protect the state by incentivizing only legitimate whistleblowers. The respective legislatures made this clear in enacting the bars. "The California Legislature, in adopting

subdivision (h)(2), intended to bar parasitic or opportunistic actions by persons simply taking advantage of public information without contributing to or assisting in the exposure of the fraud." *Weitzman*, *supra*, 107 Cal.App.4th at page 564. Likewise, through the FCA's public disclosure bar, the United States Congress strove to discourage "opportunistic plaintiffs who have no significant information to contribute of their own." *Graham County*, *supra*, 559 U.S. at page 294.

Since the language and purpose of the IFPA's public disclosure bar mirrors the language and purpose of the FCA's public disclosure bar, cases interpreting the FCA are persuasive for how to interpret the IFPA. *See Weitzman*, *supra*, 107 Cal.App.4th at page 564 ("we follow federal precedent with respect to the general purpose of the [public disclosure] jurisdictional bar—that is, to prevent *qui tam* actions brought by persons who, like the relator in *U.S. ex rel. Marcus v. Hess* [] simply copied allegations from a criminal indictment on file, learned of the specific fraudulent conduct at issue through public channels, and who had not contributed or assisted in a material way in exposing the fraud.").

The Supreme Court confronted a similar issue when addressing whether the public disclosure bar under the FCA was jurisdictional, and concluded that barring the government from pursuing its own case would be a bizarre result. *See Rockwell*

International Corp. v. United States (2007) 549 U.S. 457. In *Rockwell*, relator filed an FCA lawsuit, and the government intervened. *Id.* Later in the litigation, the trial court concluded that it lacked jurisdiction over the relator's claims due to the FCA's public disclosure bar. The Supreme Court had no difficulty concluding that the government's right to pursue its intervened claims remains notwithstanding a public disclosure. The Supreme Court found that the FCA's public disclosure bar "permits jurisdiction over an action based on publicly disclosed allegations or transactions if the action is 'brought by the Attorney General.'" *Id.*at page 477.

The same language is in the IFPA, and the same result should hold. Indeed, the Supreme Court in *Rockwell* labeled it a "bizarre result" if the government, after intervening in a relator's case, would be barred from pursuing that claim if the relator is later found to be barred by the public disclosure bar. *Id.* at page 478. Such a result is "readily enough avoided, as common sense suggests it must be, by holding that an action originally brought by a private person, which the Attorney General has joined, becomes an action brought by the Attorney General once the private person has been determined to lack the jurisdictional prerequisites for suit." *Id.*

Like the United States Supreme Court, this court should avoid the "bizarre result" of barring the government's claims against a defendant pursuant to a public disclosure bar.

III. THE TRIAL COURT ERRED IN STRIKING THE JURY TRIAL DEMAND IN THIS *QUI TAM* ACTION.

The trial court improperly denied Plaintiffs their right to a jury trial under the IFPA, holding that IFPA claims are not triable by a jury. *See* Relator's Opening Brief at pages 40-41.[3] As both appellant's briefs discuss, under the established California procedure for determining whether a jury trial right attaches to a statutory claim like the IFPA, a court should conclude there is a right to a jury trial. *See* State of California's Opening Brief at pages 70-72; Relator's Opening Brief at pages 50-53. In addition to being contrary to California precedent in general, the trial court's ruling ignores the deep-seated tradition of *qui tam* actions proceeding before a jury, and should be reversed.

Qui tam actions trace their roots to English common law, and originally were actions on behalf of the king. *See, e.g.*, *Vermont Agency of Natural Resources v. United States ex rel. Stevens* (2000) 529 U.S. 765, 768, footnote 1 ("*Qui tam* is short for the Latin phrase *qui tam pro domino rege quam pro se ipso in*

[3] The trial court also struck Plaintiffs' jury demand on a purported failure to timely pay a jury fee. TAFEF takes no position on the issues of whether a jury fee was required in this case, whether it was late, and whether a late payment results in waiver of a jury trial.

hac parte sequitur, which means 'who pursues this action on our Lord the King's behalf as well as his own.'"). As the California Supreme Court has observed, a longstanding principle of English common law is "that the king may not enter upon or seise any man's possessions upon bare surmises *without the intervention of a jury*." *People v. One 1941 Chevrolet Coupe* (1951) 37 Cal.2d 283, 296-97. (emphasis added). Thus, under California law, *qui tam* actions have with them a right to a jury trial.

In addition to the right to a jury trial for *qui tam* actions enshrined in California law, there is also a right to a jury trial in federal FCA actions, which are statutory actions just like the IFPA is. *See, e.g.*, *United States ex rel. Drakeford v. Tuomey Healthcare System, Inc.* (4th Cir. 2012) 675 F.3d 394 405 ("the district court was required to submit that [FCA] issue to the jury . . . .") The right to a jury trial is fundamental in FCA cases; indeed, in *Drakeford*, it was reversible error when the trial court "deprived [relator] of its right to a jury trial." *Id.* The right to a jury trial is so ensconced in FCA cases that there are standard jury instructions for FCA lawsuits. *See*, *e.g.*, 3C O'Malley, et al., Fed. Jury Practice & Instructions, False Claims Act, § 178, *et seq.* (6th ed. 2022).

In sum, both California and federal precedent illustrate that *qui tam* claims like the IFPA and the FCA are triable by a

jury. It was error for the trial court to deny Relator and the state of California this right.

IV. A RELATOR IS NOT BARRED FROM RAISING ARGUMENTS BEYOND THOSE RAISED BY THE GOVERNMENT.

Respondents argue that because the government has intervened in Relator Mary Lynn Rapier's case, it has sole control over the prosecution of this action. *See* Respondents' Brief at pages 56-57. In Respondents' view, Rapier can only "assist" the government in its arguments; she cannot advance her own. *Id.* Respondents' argument flies in the face of the statute, which authorizes the relator to continue as a party subject to specific statutory limitations, and established law that *qui tam* relators continue to have a voice even after the government intervenes.

The government's decision to intervene in a *qui tam* case does not foreclose all independent action by a relator. Instead, the relator is free to continue litigating on the government's behalf. Indeed, the IFPA explicitly states that after government intervention, the relator has the "right to continue as a party to the action," subject to a narrow set of restrictions, *see* California Insurance Code. Section 1871.7(f)(1), none of which are implicated in this appeal.[4] Not only is Respondents' argument

[4] The restrictions set forth in California Insurance Code Section 1871.7(f) are that (1) the government can dismiss the claim over the relator's objection, (2) the government can settle the claim over the relator's objection, (3) the government or defendant can ask the court to limit the

that Dr. Rapier cannot pursue certain claims or legal theories (*see* Respondents' Brief at pp. 56-57) contrary to the plain text of the IFPA, it is contrary to how *qui tam* cases operate.

A central design of the FCA is "to encourage a working partnership between both the Government and the *qui tam* plaintiff." 132 Cong. Rec. H9382-03 (remarks of Rep. Berman co-author of the 1986 amendments to the FCA). As Congress recognized when amending the FCA in 1986, "perhaps the most serious problem plaguing effective enforcement is a lack of resources on the part of Federal enforcement agencies." Sen. Rep. 99-345, *7. The private/public partnership is a vital part of the *qui tam* framework: "[A]ssistance from the private citizenry can make a significant impact on bolstering the Government's fraud enforcement effort." *Id.* at *8. There are myriad reasons the government may elect to pursue only certain claims or theories, including a lack of resources. Foreclosing a relator from pursuing claims or theories the government does not pursue would frustrate a key benefit of the *qui tam* structure, which is allowing private litigants to use their own resources to pursue claims the

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relator's participation if the relator would "interfere with or unduly delay" the case, and (4) the defendant can ask the court to restrict relator's participation to avoid "harassment" or "undue burden or unnecessary expense." The government has not argued that any of these limitations are implicated by the relator's pursuit of separate causes of action. Notably, this provision of the IFPA mirrors the language in the FCA. *See* 31 United States Code Section 3730(c).

government, for whatever reason, elects not to pursue. *See, e.g.*, *Federal Recovery Services, Inc. v. United States* (5th Cir. 1995) 72 F.3d 447, 449, footnote 1 ("intervention vested [the government] with control of the litigation against" defendant, but relator "retained the authority to proceed against [defendant] on its own."); *United States ex rel. Ormsby v. Sutter Health* (N.D. Cal. 2020) 444 F.Supp.3d 1010, 1077 ("[t]he government can pursue some or all of a relator's claims, and a relator can pursue claims that government does not.").

The same holds true for legal arguments within intervened claims. A relator that continues as a party to intervened claims, like Dr. Rapier here, retains the right to advance her own arguments on behalf of the government. The public/private partnership demands nothing less.

CONCLUSION

The trial court's narrow interpretation of the IFPA runs contrary to the purpose in enacting the statute, and would frustrate the benefit to the public that is the core of the IFPA and *qui tam* actions under the statutes upon which the IFPA is modeled. The IFPA should be construed broadly and given its proper construction. Once it is, many aspects of the trial court's rulings must be reversed on this appeal.

Dated: March 21, 2022 */s/ Valerie Brender*

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Certificate of Word Count Compliance

Pursuant to rule 8.204(c) of the California Rules of Court, I hereby certify that this brief contains 4,673 words, including footnotes, but excluding the portions of this brief referenced in rule 8.204(c) (the cover, the Certificate of Interested Entities or Persons, this Certificate of Word Count Compliance, and signature blocks). In making this certification, I have relied on the word count of Microsoft Word, the computer program used to prepare the brief.

Dated: March 21, 2022

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Proof of Service

I, the undersigned, declare as follows: I am over the age of 18 years and not a party to this action. I am employed at Rukin, Hyland & Riggin LLP, 1939 Harrison Street, Suite 290, Oakland, California 94612.

On March 21, 2022, I served true copies of the following document described as **BRIEF OF AMICUS CURIAE TAXPAYERS AGAINST FRAUD EDUCATION FUND IN SUPPORT OF APPELLANTS THE STATE OF CALIFORNIA AND RELATOR DR. MARY LYNN RAPIER**, on the interested parties in this action as follows:

Hon. William F. Fahey
c/o Clerk of the Superior Court
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VIA U.S. MAIL, FIRST-CLASS POSTAGE PREPAID

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I am e-filing this document through the Court of Appeal's TrueFiling service. I am designating that electronic copies be served through a link provided by email from TrueFiling to the persons who are registered with TrueFiling for this case.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed March 21, 2022, at Berkeley, California.

/s/ Valerie Brender
Valerie Brender