

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 14-1388

UNITED STATES EX REL. JEROME PALMIERI,

Plaintiff - Appellant,

and

STATE OF CALIFORNIA; STATE OF DELAWARE; STATE OF FLORIDA;
STATE OF GEORGIA; STATE OF HAWAII; STATE OF ILLINOIS; STATE
OF INDIANA; STATE OF LOUISIANA; STATE OF MICHIGAN; STATE OF
MONTANA; STATE OF NEVADA; STATE OF NEW HAMPSHIRE; STATE OF
NEW JERSEY; STATE OF NEW MEXICO; STATE OF NEW YORK; STATE OF
OKLAHOMA; STATE OF RHODE ISLAND; STATE OF TENNESSEE; STATE OF
TEXAS; STATE OF WISCONSIN; THE DISTRICT OF COLUMBIA;
COMMONWEALTH OF MASSACHUSETTS; COMMONWEALTH OF VIRGINIA,

Plaintiffs,

v.

ALPHARMA, INCORPORATED; ALPHARMA PHARMACEUTICALS, LLC; KING
PHARMACEUTICALS, INCORPORATED; PFIZER, INCORPORATED,

Defendants - Appellees.

Appeal from the United States District Court for the District of
Maryland, at Baltimore. Ellen L. Hollander, District Judge.
(1:10-cv-01601-ELH)

Submitted: June 30, 2015

Decided: April 26, 2016

Before GREGORY, DUNCAN, and DIAZ, Circuit Judges.

Vacated and remanded by unpublished per curiam opinion.

Anna C. Dover, Rolando G. Marquez, MILBERG, LLP, New York, New York; John B. Isbister, Jaime W. Luse, TYDINGS & ROSENBERG, LLP, Baltimore, Maryland, for Appellant. Steven J. Menashi, KIRKLAND & ELLIS, LLP, New York, New York; John C. O'Quinn, Devin A. DeBacker, KIRKLAND & ELLIS LLP, Washington, D.C., for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Relator Jerome Palmieri appeals the district court's dismissal of his qui tam complaint against his former employer, Alharma, Inc., and associated companies (collectively, "Defendants"), under the False Claims Act ("FCA"). The district court dismissed Palmieri's complaint pursuant to Fed. R. Civ. P. 9(b), for failure to plead his claims of fraud with sufficient particularity. In so ruling, the district court did not address Defendants' arguments that Palmieri's claims were precluded by the FCA's first-to-file bar, 31 U.S.C. § 3730(b)(5) (2006),* and public-disclosure bar, 31 U.S.C. § 3730(e)(4)(A) (2006), amended by Patient Protection & Affordable Care Act, Pub. L. No. 111-148, tit. X, sec. 10104(j)(2), 124 Stat. 119, 901-02 (2010).

Under the pre-2010 version of § 3730 that governs Palmieri's action, see United States ex rel. May v. Purdue Pharma L.P., 737 F.3d 908, 915 (4th Cir. 2013) (recognizing "that the 2010 FCA amendments may not be applied to cases arising before the effective date of the amendments"), both the first-to-file and public-disclosure defenses are jurisdictional in nature, see id. at 914-18, 920 (§ 3730(e)(4)(A)); United States ex rel. Carter v. Halliburton Co., 710 F.3d 171, 181 (4th Cir. 2013) (§ 3730(b)(5)),

* The current version of § 3730(b)(5) is identical to the version in effect at the time Palmieri's claims arose.

rev'd in part on other grounds, Kellogg Brown & Root Servs., Inc. v. United States ex rel. Carter, 135 S. Ct. 1970 (2015). We conclude, therefore, that the district court was obligated to consider both defenses before assessing the sufficiency of Palmieri's complaint. Accordingly, we vacate the district court's order and remand this case for consideration in the first instance of whether the FCA's first-to-file bar or public-disclosure bar deprived the district court of subject-matter jurisdiction.

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

VACATED AND REMANDED