UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
at CHATTANOOGA

UNITED STATES OF AMERICA *ex rel.* GLENDA MARTIN and STATE OF TENNESSEE *ex rel.* GLENDA MARTIN,	)	
Plaintiffs / Relator,	)	
	)	Case No. 1:08-cv-251
v.	)	
	)	Judge Mattice
LIFE CARE CENTERS OF AMERICA, INC.,	)	
Defendant.	)	

UNITED STATES OF AMERICA *ex rel.* TAMMIE JOHNSON TAYLOR,	)	
Plaintiff / Relator,	)	
	)	Case No. 1:12-cv-64
v.	)	
	)	Judge Mattice
LIFE CARE CENTERS OF AMERICA, INC.,	)	
Defendant.	)	

ORDER

Before the Court is Defendant's Motion to Compel Responses to Discovery Requests. (Doc. 214). The parties appeared before the Court for a hearing on Defendant's Motion on February 11, 2015, at which they presented argument in support of their respective positions. For the reasons stated herein, Defendant's Motion (Doc. 214) will be **DENIED**.

I. BACKGROUND

This consolidated *qui tam* action was filed separately by relators Glenda Martin and Tammie Taylor. (Doc. 69 at 5). The Government moved to intervene as Plaintiff in this case on October 1, 2012, and the Court granted the Government's Motion on November 15, 2012. (Docs. 60, 67). In the same Order, the Court also ordered that Martin and Taylor's cases be consolidated. (Doc. 67). In its Consolidated Complaint in Intervention, the Government identified claims for false and fraudulent claims (Count I); false statements (Count II); unjust enrichment (Count III); payment by mistake (Count IV); and conversion (Count V). (Doc. 69 at 47-48).

On February 18, 2014, Defendant filed a Motion for Partial Summary Judgment regarding the Government's use of statistical sampling and extrapolation with regard to its claims brought pursuant to the False Claims Act ("FCA"). (Doc. 140). On June 18, 2014, the Court held a hearing on Defendant's Motion for Partial Summary Judgment, and the parties presented argument in support of their positions. (Docs. 172, 176).

On September 29, 2014, the Court denied Defendant's Motion for Partial Summary Judgment. (Doc. 184). In denying Defendant's Motion, the Court "reviewed the language and the legislative history of the FCA as well as the relevant case law and conclude[d] that the use of statistical sampling, to the extent described [within its Order], is a legally viable mechanism which the Government may employ in attempting to prove the FCA claims in this action." (*Id*. at 36). On October 10, 2014, Defendant filed a Motion to Certify the Court's September 29, 2014 Order for Immediate Interlocutory Appeal Under 28 U.S.C. § 1292(b). (Doc. 187). The Court denied Defendant's Motion for an interlocutory appeal on November 24, 2014. (Doc. 209).

On December 1, 2014, Defendant filed the instant Motion to Compel Responses to Discovery Requests. (Doc. 214). In its Motion, Defendant requests that the Court require the Government to supplement its discovery responses by (1) identifying each of the alleged claims, records or statements on which the Government intends to establish liability and damages; (2) producing documents identifying or evidencing each of the alleged submissions on which the Government intends to establish liability; and (3) identifying with some specificity those submitted claims that resulted from, or were caused by Life Care's alleged corporate pressure. (Doc. 215 at 6). Defendant argues that this information is relevant and, without it, the Government's discovery responses are incomplete. (*Id.* at 10). The Government argues in response that Life Care is attempting to relitigate the statistical sampling and extrapolation issue, which was already decided in the Court's orders on summary judgment and interlocutory appeal. (Doc. 221 at 4). The Government also explains that it has provided Life Care with the relevant claims data and minimum data sets for the claims in the universe of 82 facilities. Thus, Life Care could do this research itself. (*Id.* at 7).

The Court held a hearing on Defendant's Motion on February 11, 2015. At the hearing, Defendant's counsel suggested that the Court should also compel the Government to produce all evidence establishing causation between its FCA claims (including those within the statistical sample) and the alleged corporate pressure inflicted by Life Care. However, upon review of Defendant's Motion, the Court finds that this issue has not been sufficiently developed, and the Court declines to address it in this Order. If the parties are unable to resolve this issue after a meet and confer session, Defendant may file a motion setting forth its position on this issue.

II. STANDARD OF LAW

Federal Rule of Civil Procedure 26(b)(1) describes the scope of discovery as "any nonprivileged matter that is relevant to any party's claim or defense–including the existence, description, nature, custody, condition, and location of any documents or other tangible things and the identity and location of persons who know of any discoverable matter." Fed. R. Civ. P. 26(b)(1). The United States Supreme Court has construed the term "relevant" to include "any matter that bears on, or that reasonably could lead to other matter that could bear on, any issue that is or may be in the case." *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978) (citing *Hickman v. Taylor*, 329 U.S. 495, 501, 67 S.Ct. 385, 388 (1947)). Thus, the scope of discovery under Rule 26 is "traditionally quite broad." *Lewis v. ACB Bus. Servs., Inc.*, 135 F.3d 389, 402 (6th Cir. 1998).

However, this scope is subject to the limitations set forth in Rule 26(b)(2)(c). Rule 26(b)(2)(c) provides that:

> the court must limit the frequency or extent of discovery otherwise allowed by these rules or by local rule if it determines that:
>
> > (i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;
> >
> > (ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or
> >
> > (iii) the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues.

Fed. R. Civ. P. 26(b)(2)(c)(i)-(iii).

III. ANALYSIS

The Court finds Defendant's Motion to be without merit for several reasons. First, Defendant moves the Court to have the Government identify "unidentified" claims which, by their very nature, are unknown. Second, Defendant has already effectively sought and been denied this relief in the Court's orders on its summary judgment motion and its motion for interlocutory appeal. Third, Defendant's position, although it seems designed to highlight Defendant's disagreement with the Court's earlier, substantive orders regarding statistical sampling, ironically also seems to reinforce the need to employ statistical sampling and extrapolation in the instant case, because it implicitly acknowledges the significant burden of a claim-by-claim review. The Court will address each of these points in turn.

The first point relates to the rhetorical terminology used regarding the information Defendant is trying to compel. Specifically, Defendant requests that the Court compel the Government to disclose information related to "unidentified" claims. *See* Doc. 215 at 5, 11, 13, 14, 15, 18, 19. Generally, the term "unidentified" is defined as "known but not named."[1] Here, however, the claims themselves are not unidentified because, as a result of the Court permitting the Government to proceed by way of statistical sampling and extrapolation, the claims are not known to the Government and the Government has not analyzed each individual claim within the universe of claims. Thus, labeling these claims as simply "unidentified" is misrepresentative of their true classification because their specific identify is actually "unknown" to either party.

The problem with Defendant requesting discovery related to these "unidentified" claims lies in the very fact that they are requesting unknown information. In other

[1] Merriam-Webster Online Dictionary, http://www.merriam-webster.com/thesaurus/unidentified

words, Defendant is not simply requesting that the Government disclose discovery, they are essentially requesting that the Court impose an affirmative burden on the Government to identify each claim in the total universe of claims which could be categorized as false. Such a request is clearly inconsistent with, and contrary to, this Court's previous rulings.

The Court has had several opportunities to address the Defendant's position on statistical sampling and extrapolation in this action. Although the Court set forth the procedural history of this case *supra*, its substantive rulings on previous motions are worth noting here. In its September 29, 2014 Order on Defendant's Motion for Summary Judgment, the Court held that "statistical sampling may be used to prove claims brought under the FCA involving Medicare overpayment." (Doc. 184 at 38). In considering whether statistical sampling and extrapolation was appropriate in this action, the Court considered many factors, including the language of the FCA, the body of case law that has developed along with the FCA, and the number of allegedly false claims before the Court. When considering the possibility of having the Government identify each and every false claim, the Court found that "the Government *could* specify in detail the specific claims for which it alleges are false, but in order to do so, it would require the devotion of more time and resources than would be practicable for any single case." (*Id*. at 26) (emphasis original). The Court then affirmed these findings in its November 24, 2014 Order denying Defendant's Motion for Interlocutory Appeal. (Doc. 209).

Presented with the issue of statistical sampling and extrapolation for (at least) the third time through the vehicle of a motion to compel, it appears to the Court that Defendant is attempting to have the discovery tail wag the substantive dog of rulings the

Court has previously made on statistical sampling and extrapolation. It should come as no surprise then, that the Court will reach the same conclusion as it did on the previous two motions filed by the Defendant on this issue. Further, to the extent that Defendant is suggesting that either of the Court's Orders on the issue of statistical sampling and extrapolation were unclear, the Court will hold–for at least the third time–that the Government will not be required to engage in a claim-by-claim review of the entire universe of claims.

As a final matter, in support of its Motion, Defendant argues that the requested information "is critical to Life Care's ability to investigate and develop its factual defenses, as well as its efforts to attack the Government's extrapolation methodology." (Doc. 215 at 8). Although Defendant may assert otherwise, there are a myriad of options available to the Defendant to defend its case and attack the Government's statistical sampling and extrapolation. Simply because the Defendant may choose, among these options, to pursue a litigation strategy that relies on a claim-by-claim review does not justify placing the burden on the Government to be the party that performs that review.

Rather, as the Government points out in its brief, the Government has already provided Defendant with the patients, their "claim number and identifier, the dates the claims were received, processed, and paid, the dates of admission and discharge, the dates of service, the amount paid by Medicare on the claim, the facilities where services were provided, and the [Resource Utility Group] level of reimbursement, among other data" for the universe of claims, thus leaving the Defendant capable of performing a claim-by-claim review if it so chooses. (Doc. 221 at 7). Again, the irony inherent in Defendant's emphasis on the significance of the respective burden on the parties of engaging in a claim-by-claim review seems to reinforce the Court's earlier observation

that insistence on such an individualized review by *either* party is not justified in this case.

Accordingly, the Court finds that all of Defendant's arguments are without merit, and Defendant's Motion to Compel (Doc. 214) is hereby **DENIED**.

SO ORDERED this 18th day of February, 2015.

/s/ Harry S. Mattice, Jr.
HARRY S. MATTICE, JR.
UNITED STATES DISTRICT JUDGE