IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

U.S. *ex rel.* ALBERT C. HANNA,	)	
Relator,	)	
-vs-	)	**No. 11 C 04885**
	)	**Hon. Milton I. Shadur**
THE CITY OF CHICAGO,	)	
Defendant.	)	

REPLY MEMORANDUM IN SUPPORT OF THE
CITY OF CHICAGO'S MOTION TO DISMISS

I. THE NATURE OF HANNA'S CLAIM

Hanna discloses for the first time in his brief that this entire case is about whether the City complied with its statutory duty affirmatively to further fair housing ("AFFH"). His brief reveals that he makes no direct claim that the City discriminated in its delivery of services or administration of its grants, such that Title VI of the Civil Rights Act of 1964 or the anti-discrimination provisions of the Fair Housing Act were violated (as he alleged in the complaint at ¶2). Those statutes that impose the AFFH duty[1] do not define the scope of the duty. Accordingly, some courts have held that the duty is too "vague and amorphous" to be enforced under 42 U.S.C. §1983. *Thomas v. Butzen,* 2005 U.S. Dist. Lexis 21525 (N. D. Ill. Sept. 26, 2005); *MHANY Management v. Cnty. of Nassau,* 843 F.Supp.2d 287 (E.D.N.Y. 2012); *South Middlesex Opp. Council, Inc. v. Town of Framingham*, 2008 U.S.Dist. Lexis 85764 (D. Mass. Sept. 30, 2008).[2] That being so, it is all but impossible to

[1]This duty is rooted in the Fair Housing Act (42 U.S.C. § 3608(e)(5)), the Housing and Community Development Act (42 U.S.C. § 5304(b)(2)) and the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. § 12705(b)(15)). *See* Cmplt. ¶20.

[2]Earlier contrary authority, *e.g., Wallace v. Chicago Housing Authority,* 298 F.Supp.2d 710 (continued...)

suggest that the City can commit a knowing fraudulent act in violation of the False Claims Act ("FCA") in connection with breach of a duty that is too "vague and amorphous" to enforce judicially.

Hanna tethers his claim to federal regulations 24 C.F.R. §§ 91.225(a)(1) and 570.601(a)(2), which seek to implement the statutory AFFH duty. Pltf's Br. ("Br.") at 2-3. These regulations require that a recipient of HUD funds, like the City, certify that it will "conduct an analysis to identify impediments to fair housing choice within the [City]," "take appropriate actions to overcome the effects of ***any impediments identified through that analysis,*** " and "maintain records reflecting the analysis and actions in this regard."[3] *Id.* (emphasis added). Accordingly, HUD asks each grantee to submit its findings in an Analysis of Impediments to Fair Housing document ("AI").

Hanna does not allege that the City failed to develop an AI, failed to identify specific fair housing impediments, or failed to address fair housing concerns regarding race (or any other protected condition) in its AI, as was the case in *U.S. ex rel. Anti-Discrimination Ctr. v. Westchester Cnty.,* 668 F.Supp.2d 548 (S. D.N.Y. 2009). Indeed, he concedes that the City timely submitted AIs and Consolidated Plans ("CPs").[4] Hanna Aff. ¶¶ 9, 24, 25 and 28.[5] Instead, Hanna complains that

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[2](...continued)
(N.D. Ill. 2003), is discussed in these decisions.

[3]Hanna tries to expand this duty by saying the analysis must be "comprehensive," and suggesting that ***every*** impediment to fair housing must be documented and attacked. That, however, is not what the regulations require.

[4]The "Consolidated Plan is intended as the program participant's [*i.e.*, the City's] comprehensive mechanism to gather relevant housing data, detail housing, homelessness, and community development strategies, and commit to specific actions. These are then updated annually through annual action plans." *See* 78 Fed. Reg. 43710, 43713 n. 6 (July 19, 2013) (HUD's proposed revised regulations on the AFFH duty).

[5]In his affidavit, Hanna does not supply the AIs or the CPs. Instead, he quotes from them in (continued...)

the City did not identify the impediments to fair housing that ***he*** deems important.

Hanna supplies an affidavit describing (but not offering) a report he commissioned that, he contends, shows a concentration of subsidized housing in racially impacted areas. As a threshold matter, however, the regulatory authority that Hanna relies upon does not impose a duty to tackle ***every*** impediment to fair housing at once, nor to eradicate all vestiges of segregation immediately. *See* Br. at 3, quoting 24 C.F.R. §§91.225(a)(1), 570.601(a)(2). Nor does it obligate the City to tackle those impediments that Hanna, or any other citizen, may believe are most important. The City only is charged with taking and recording ***"appropriate actions to overcome any impediments identified through [the City's AI] analysis."*** *See id.* (emphasis added).[6]

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[5](...continued)
a misleading way. For example, he suggests that while the 2005-2009 AI acknowledged the City's high level of segregation, the 2010-2014 AI concluded that the City was "racially and ethnically diverse." Hanna Aff., ¶28. But he omits the part of the quoted sentence that identifies exactly how many communities are predominantly African-American, Latino and White, as well as the geographic racial composition of the City (at pp. 9-10). The same 2010-2014 AI later says: "While racial and ethnic diversity in Chicago has increased communities have not proportionately become more racially and ethnically integrated" (at p. 27), thus specifically acknowledging Chicago's enduring racial segregation.

[6]While Hanna points to the 1996 Fair Housing Planning Guide as the standard to be used in developing AI documents, HUD has very recently distanced itself from this document, acknowledging that the Guide "does not fully articulate the goals that AFFH must advance." 78 Fed. Reg. at 43713 (July 19, 2013). In 2010, the General Accounting Office concluded that HUD's guidance to local jurisdictions on AI planning as well as the content of AI documents was inadequate. Coupled with HUD's failure to provide local jurisdictions with any oversight, this left municipalities largely in the dark as to what was required of them, in terms of meeting their AFFH duty. *See* GAO-10-905 "HUD Needs to Enhance Its Requirements and Oversight of Jurisdictions' Fair Housing Plans" (September 2010). In response, HUD proposed regulations on July 19, 2013, to implement 42 U.S.C. §3608(e)(5) and the other statutory AFFH provisions on which Hanna predicates his false claims case. *See* 78 Fed. Register 43710 (July 19, 2013).

While these proposed regulations have not been finalized, the commentary recognizes that the Planning Guide has not in the past adequately informed local jurisdictions of what was required in their AIs. *Id.* at 43713 ("sufficient guidance and clarity was viewed as lacking"). Spurred by the (continued...)

Even if the City were charged with addressing every impediment to fair housing that any citizen offered (which it is not), Hanna fails to disclose any impediments he has personally "discovered." He does not share his report, and despite a twelve-page affidavit, offers nothing more than broad, conclusory statements: *e.g.,* the City adopted "zoning, land use, building code, funding, location of affordable housing units, and structure of housing subsidy programs [to] push the City's low and moderate income African-American and Latino residents" into low opportunity neighborhoods. Br. at 14.[7] Hanna does not identify which laws, decisions or policies he is talking about, let alone how any of them caused or perpetuated segregation. During the six-year period at issue, the City made thousands of zoning decisions, in a wide variety of contexts, involving many different properties, enforcing a comprehensive and detailed zoning code. Which zoning decisions are objectionable to Hanna, and how did they contribute to segregation? The same questions can be asked for the City's building code and the virtually limitless building code decisions and enforcement policies, as well as the City's many funding decisions and subsidy programs. Hanna's

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[6](...continued)
GAO report, HUD has acknowledged the need to provide municipalities with "more effective guidance and technical assistance and the data necessary to prepare fair housing plans." *Id*. The regulations "rethink HUD's approach to how program participants affirmatively further fair housing," *id.*, and provide for an entirely different system in which HUD will supply jurisdictions with data on segregation, racial and ethnic concentration, poverty numbers and other such information. The focus will be on a planning process that identifies key obstacles to fair housing. Importantly, however, HUD's rules do not require, as Hanna would, that a municipality take on all such obstacles. "The proposed rule does not mandate specific outcomes for the planning process. Instead, recognizing the importance of local decision-making, it establishes basic parameters and helps guide public sector housing and community development planning and investment decisions ..." *Id.* at 43711. "[N]either the proposed rule nor the improved process that it will establish defines the strategies or actions program participants will take." *Id.* at 43716.

[7]The Court may consider Hanna's affidavit in deciding the jurisdiction issue, but not as to whether Hanna states a claim. *See Frederick v. Simmons,* 144 F.3d 500, 504 (7th Cir. 1998).

failure to identify any particular actions that are the basis for his sweeping charge that the City is "perpetuating segregation" dooms the complaint, both as a matter of subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1) and in terms of Fed. R. Civ. P. 9(b).

II. THE COMPLAINT SHOULD BE DISMISSED FOR LACK OF JURISDICTION

A. Public Disclosure. It is undisputed that Hanna, as the relator, bears the burden of establishing subject matter jurisdiction. *Glaser v. Wound Care Consultants, Inc.*, 590 F.3d 907, 913 (7th Cir. 2009). Hanna concedes that the data used in the report he commissioned was compiled from City documents. Hanna Aff., ¶18.[8] He does not deny that the City discloses the location of every affordable housing development on its website. Nor does he dispute that the website meets the "public disclosure" criterion in the FCA, 31 U.S.C. § 3730(e), both before and after the March 23, 2010 amendment.[9]

Rather, he argues that even if the data in the report was publicly available, the "public disclosure" bar in the FCA requires that the fraudulent allegations or transactions must also have been publicly disclosed. Br. at 4-8. But he does not identify any fraudulent allegations or transactions in his complaint, affidavit, or brief. All he offers are conclusory assertions that the City

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[8]Though Hanna refers to an "historical analysis" from 1970-2010 that he says was created by the Voorhees Center (which in turn, he says, includes data from the City's Department of Housing, the Illinois Housing Development Authority and HUD, cross-referenced with data from the DePaul Institute for Housing Studies, HUD, and the City's quarterly reports on affordable housing), *see* Hanna Aff., ¶16, all the data he relies on for the six year period that is actually at issue was originally obtained from the City. *Id.* ¶18.

[9]Both the pre- and post-amendment versions of 31 U.S.C. §3730(e)(4)(A) provide that allegations or transactions are publicly disclosed if they are "substantially similar" to allegations or transactions in statutorily identified sources. *See Glaser, supra*, 570 F.3d at 920 (adopting "substantially similar" standard). Both versions of the statute expressly recognize that disclosure through the "news media" constitutes public disclosure under the FCA. The term "news media" includes websites. *See* cases cited in the City's opening brief at 6.

certified that it was affirmatively furthering fair housing, but was "actually discouraging the development of low-income housing available to minorities in certain sections of Chicago and actively furthering segregation." Br. at 7. At most, Hanna's affidavit offers vague references to downzoning or historic preservation actions, but he never alleges who used these tools, when or how they furthered segregation in the City, nor any facts to suggest the City knew that these tools were being used in such a fashion. He does not provide even one specific example.

Since Hanna confines himself to conclusory allegations that do not actually identify any fraud, he cannot then turn around and complain that the City has not identified the public disclosure of any specific fraudulent allegations or transactions. Hanna has the burden of proof and thus the obligation, in the first instance, to describe these fraudulent allegations or transactions. *See Glaser, supra*, 570 F.3d at 913. He has failed to meet this obligation.

In the cases Hanna cites, the relators did make specific allegations about fraudulent allegations or transactions. *See, e.g., Glaser, supra,* 570 F.3d 907 (billing Medicaid for physician's assistants' work at doctor's rate); *U.S. ex rel. Springfield Terminal Ry. v. Quinn,* 14 F.3d 645 (D.C. Cir. 1994) (billing for services never rendered)*; U.S. ex rel. Yarberry v. Sears Holding Corp.,* 2013 WL 1287058 (S.D. Ill. March 28, 2013) (kickbacks to Medicare and Medicaid beneficiaries for using defendants' pharmacies). The jurisdictional question then in each case was whether a "prior disclosure" described the specific fraud alleged, or merely identified data that was insufficient to show a fraudulent scheme.[10]

[10]In the cases Hanna cites at fns. 6 and 7 of his brief, the relators alleged specific fraudulent transactions or schemes. Where the scheme had previously been disclosed in statutorily-approved public sources, the courts declined jurisdiction. *See, e.g.*, *U.S. ex rel. Feingold v. AdminaStar Fed., Inc.,* 324 F.3d 492 (7th Cir. 2003) (no jurisdiction as government and news reports detailed improper (continued...)

Hanna offers nothing but his assertion that he commissioned a study and maps showing the location of affordable housing in the City. The suggestion is that because this housing is mostly in racially impacted areas, the City is furthering segregation despite certifying to the contrary. In its opening brief, however, the City described its principal initiative to desegregate affordable housing: the Chicago Housing Authority's ("CHA's") multi-billion dollar Plan for Transformation, which is funded with CDBG and HOME federal dollars from the City.[11] The thousands of units built under this program in predominantly African-American census tracts have been approved by Judge Aspen and the Seventh Circuit as a ***desegregation*** remedy based on findings that demolition of dilapidated

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[10](...continued)
claims); *U.S. v. Bank of Farmington,* 166 F.3d 853 (7th Cir. 1999), *overruled on other grounds by Glaser, supra* (no jurisdiction as bank had previously disclosed allegedly fraudulent transactions to federal bank regulator).

Where the scheme alleged had not, in material respects, been publicly disclosed, the court had jurisdiction. *See, e.g., U.S. ex rel. Balthazar v. Warden,* 635 F.3d 866 (7th Cir. 2011) (jurisdiction where GAO had identified fraud among chiropractors other than defendants); *U.S. ex rel. Yannacopolous v. General Dynamics,* 315 F.Supp.2d 939 (N.D. Ill. 2004) (overcharge for work that was billed but not performed and news coverage did not address overbilling allegations at issue); *Leveski v. ITT Educational Services, Inc.,* 719 F.3d 818 (7th Cir. 2013) (jurisdiction found where prior *qui* tam case against same defendant alleging fraud in student financial aid involved different scheme during different time period and different department); *U.S. ex rel. Fowler v. Caremark RX, L.L.C.,* 496 F.3d 730 (jurisdiction where disclosure was based on inside information not previously disclosed to government); *U.S. ex rel. Fallon v. Accudyne Corp.,* 921 F.Supp. 611, 624 (W.D. Wisc. 1995), *aff'd,* 97 F.3d 937 (7th Cir. 1996), *overruled on other grounds by Rockwell Int'l Corp. v. U.S.,* 549 U.S. 457, 468-69 (2007) (jurisdiction where there was no prior disclosure of claims that supplier provided government false data to bill for nonconforming parts).

[11]Hanna wrongly asserts that the Plan for Transformation was developed as part of a desegregation plan to which the City was not a party. Br. at 15 n.14. The Plan for Transformation expressly involves the City, as the CHA's website makes clear. *See* www.thecha.org/pages/the_plan _for_ transformation/22.php ("The Plan for Transformation began in 2000 under the leadership of Mayor Richard M. Daley with approval from the U.S. Department of Housing and Urban Development (HUD)"). The quarterly reports the Receiver filed in *Gautreaux* with Judge Aspen show the City's financial participation through tax credit and subsidy programs, and the City has been a formal party as well in *Gautreaux*. *See* Order attached hereto as Exh. A.

public housing to develop mixed-income housing on the sites will lead to integration in previously segregated neighborhoods. *See Gautreaux v. CHA,* 491 F.3d 649, 651-53 (7th Cir. 2007), and the City's opening brief, Exhs. B and C. *Gautreaux* makes clear that the mere fact that the City located mixed-income housing in historically segregated neighborhoods does not show that the City is engaged in segregation, let alone that it committed a knowing fraud by certifying that it was affirmatively furthering fair housing. In other words, Hanna's study and maps do not set forth a fraudulent allegation or transaction.

If Hanna believes that the City is knowingly using its zoning rules, its building code or structuring its subsidy programs in order to preserve or further segregation in the City, then it is incumbent upon him to identify what specific zoning and building actions it has taken and how these actions advance segregation. But he has not done so. Since he bears the burden of showing that the Court has jurisdiction over his claim, his failure to offer anything more than information that has been publicly disclosed in the news media (including the City's published ordinances–such as the zoning and building codes–available on its website), and litigation dooms his lawsuit for the periods both before and after the FCA was amended unless he was the original source of that information.

B. Hanna Is Not An Original Source. If there is public disclosure, Hanna must show he is an original source. In his complaint, Hanna alleged only that he had "facts" that had not been publicly disclosed. Cmplt. ¶ 35. In his brief, he says that even if the allegations or transactions were publicly disclosed, he was an original source. Br. at 10-13.[12] But he is not an "original source," under either the pre- or post-amendment version of §3730(e)(4).

[12] A complaint may not be amended by a brief in opposition to a motion to dismiss. *Shanahan v. City of Chicago,* 82 F.3d 776, 781 (7th Cir. 1996) (citing case law).

Hanna relies upon *U.S. ex rel. Lamers v. City of Green Bay,* 168 F.3d 1013 (7th Cir. 1999), where the city allegedly lied about the bus service it was providing for children. The court held that the relator, who had personally observed and documented the bus service that the city was in fact providing, supplied direct and independent information about what the city was actually doing. In contrast, Hanna says only that he provided a report showing information already available to all — the location of subsidized housing in Chicago. Hanna added nothing tangible to the public record akin to the *Lamers* relator's documentation of actual bus service.[13]

In *U.S. ex rel. Hartigan v. Palumbo Bros., Inc.*, 797 F. Supp. 624, *recon. den.*, 796 F. Supp. 352 (N.D. Ill. 1992), also cited by Hanna, the relator/Attorney General of Illinois had conducted an investigation that found that defendants submitted false documentation of minority and women business participation. In contrast, Hanna's allegations do not contain facts showing a purposeful fraud. He just says he commissioned a report showing locations of public housing developments based on previously published information. A relator is not an original source merely because he disagrees with others as to whether conduct is properly characterized as fraudulent. *See U.S. ex rel. Reagan v. E. Tex. Med. Ctr. Reg'l Healthcare Sys.*, 384 F.3d 169, 179 (5th Cir. 2004); *Whipple v. Chattanooga-Hamilton Cnty. Hosp. Auth.*, 2013 U.S. Dist. Lexis 120515, at *25-*26 (M.D. Tenn. Aug. 26, 2013).

Since Hanna has discovered no new information, he retreats to arguing that he can be an original source even though his knowledge is based upon public disclosures. Br. at 10. But the cases he cites do not support him. In *Bank of Farmington, supra*, 166 F.3d 853, the relator discovered

[13]Hanna characterizes his report as "original research." Br. at 12. But without the actual report, all that remains are Hanna's own conclusions about the report, not any "facts" that he added to the public record.

information during a collection action that the bank had already disclosed to the government. Accordingly, the court held that the relator was ***not*** an original source. It noted in *dicta* that perhaps "in an exceptionally complicated allegation of fraud," a relator could be an original source if he identified hidden fraud by stitching together publicly disclosed information, but the relator in *Farmington* did not qualify. Nor does Hanna qualify, since information about the location of subsidized housing in Chicago is not complex and is readily available.

In *Yannacopolous, supra,* 315 F.Supp.2d 939, a former employee alleged that General Dynamics and Lockheed Martin overbilled the government. The court held that no prior source had disclosed the entire complex scheme. In *dicta*, the Court said that the relator had raised contested issues of fact as to whether his investigation pieced together fraud that would never have otherwise been disclosed. In contrast, all of Hanna's information is publicly available, and in any event, he has not identified any fraudulent scheme at all, much less one that would not be apparent without his investigation.

In *U.S. ex rel. Jamison v. McKesson Corp.,* 649 F.3d 322 (5th Cir. 2011), also cited by Hanna, the court found that the relator, a medical equipment provider, was ***not*** an original source. The relator suspected that large numbers of competitors had engaged in the practice of submitting kickbacks of Medicare and Medicaid reimbursements to nursing homes, but he was unable to provide specific allegations about any of the particular defendants. Thus, he had no direct or independent information about the scheme he alleged. Hanna has not identified any such information either.

In sum, Hanna has failed to meet the jurisdictional bar in the FCA, for the time periods both before and after the statute was amended on March 23, 2010. The complaint must therefore be

dismissed for lack of subject matter jurisdiction.

III. THE COMPLAINT FAILS THE RULE 9(b) STANDARD FOR PLEADING FRAUD.

Hanna concedes that his complaint must comply with the heightened pleading standard set forth in Fed.R.Civ.P. 9(b), which requires a plaintiff alleging a violation of the FCA to "state with particularity the circumstances constituting fraud." Br. at 13.[14] The Seventh Circuit has held that an FCA complaint must set forth "the who, what, when, where and how" of the fraud. *See, e.g., Fowler*, 496 F.3d at 740 (citing cases). Hanna argues that he need not set forth any such detail because, according to him, the complaint "describes a pattern of fraud over the past six years." Br. at 14. He asserts that this brings his complaint within this Court's decisions in *U.S. ex rel. Salmeron v. Enterprise Recovery Sys. Inc.*, 464 F.Supp. 766 (N.D. Ill. 2006) and 2008 U.S.Dist. Lexis 38115 (N.D. Ill. May 9, 2008). *Salmeron*, however, is of no avail to Hanna.

In that case, the plaintiff, a general manager of Enterprise, alleged that the defendants participated in an ongoing scheme to recover payments on a large volume of defaulted student loans from the U.S. Department of Education by creating false records of communications with the debtors. 464 F.Supp.2d at 767-68. The plaintiff alleged that, from her position in the company, she learned that the loan guarantor had alerted Enterprise to which accounts would be audited, thereby allowing Enterprise to doctor the accounts. This Court held that the plaintiff did not also need to allege individual instances of false bills because the complaint provided an outline of the scheme sufficient to put the defendants on notice of the claim and inform them of what they would have to do to mount a defense.

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[14]Hanna's affidavit is not properly considered in deciding whether his complaint states a claim on which relief can be granted under Rule 12(b)(6). *Frederick, supra,* 144 F.3d at 504.

But unlike *Salmeron*, Hanna's allegations are so general that even the outline of a purposeful fraud is lacking. He alleges only his belief that the City's laws, decisions and policies have caused housing segregation. Armed with that self-assurance, he then ***assumes*** that the City had to "know" that its laws, decisions and policies are discriminatory. But an allegation that assumes the defendant must have known and was therefore lying is not an allegation of "an objective falsehood" and thus does not meet the Rule 9(b) test for alleging fraud. *Yannacopoulos*, 652 F.3d at 836. Hanna claims nothing more than that the City has not embraced what Hanna himself thinks are the key impediments to furthering fair housing in the City. But no federal statute or regulation requires the City to identify and attack the impediments that Hanna perceives as most important.[15] His sweeping "allegations" encompass all zoning and land use decisions, each provision of the building code, all decisions on the location of public housing, and the structure of all housing subsidy programs in the six years covered by the complaint which, he claims, have forced minorities into low opportunity areas. Br. at 14.

Given this context, Hanna's complaint could only meet Rule 9(b)'s "particularity" test if he identified specific provisions, decisions or policies, and then alleged facts showing that they exacerbated race discrimination. But there are no allegations as to any scheme by which the City used any or all of these provisions, decisions or policies to further segregation, let alone the "who, what, when, where and how" as to that purported scheme. The City could not begin to mount a defense to such broad and unanchored generalities.

Indeed, Hanna's complaint does not meet the Rule 8 standard, much less the heightened

[15]Hanna conspicuously avoids mentioning Judge Aspen's continuing supervision of the race discrimination claims in the *Gautreaux* litigation.

pleading requirements of Rule 9(b). *See Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009).[16] His bottom line conclusions are too broad to be meaningful: it is surely implausible to suggest that ***every*** provision of the City's zoning and building codes, and ***every*** zoning and building code decision made over the six year False Claims Period was discriminatory. *See, e.g..*, *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 388 (1926) (zoning restrictions should be upheld if their validity is even "fairly debatable"); *Nikolich v. Arlington Heights*, 870 F. Supp. 2d 556, 563 (N.D. Ill. 2012) (zoning provisions neutrally applied do not discriminate against disabled).

Moreover, even if (as Hanna apparently believes) the City is wrong in believing that it is fostering integration by its laws, decisions and policies, he has failed to allege a fraud under the FCA. The City has cited cases holding that a plaintiff cannot state an FCA claim by alleging that a defendant was wrong about the results of its conduct, even if events later prove that the defendant was incorrect. *See* the City's brief at 14-15. Hanna does not address this body of law or distinguish the cases the City cited.

Hanna also fails to grapple with the cases the City cited holding that plaintiffs cannot base claims on allegations that the defendant used faulty calculations or made scientific errors. *See id.* Hanna must allege that the City engaged in "an objective falsehood." *Yannacopoulos*, 652 F.3d at 836 (citing cases). This is because "[t]he Act is concerned with ferreting out 'wrongdoing'" by telling a lie, not with errors or differences over policy. *Chen-Cheng Wang ex rel. U.S. v. FMC Corp*,

[16]Hanna references ¶¶ 6, 24 and 32 in the complaint as well (Br. at 14). But those paragraphs are also conclusory in that they provide no specifics as to what the City did that was supposedly fraudulent.

975 F.2d 1412, 1421 (9th Cir. 1992)(citing cases). Hanna does not distinguish those cases either.[17]

Hanna argues that,"though not required," his complaint provides the necessary detail because he broadly refers to four federal programs from which the City obtains funding "on multiple occasions in the past six years" based on certifications that it complied with fair housing statutes. Br. at14, n. 12. Again his generalization fails the Rule 9(b) standard. These programs — which he alleges involve at least $880 million over the six year period at issue (Cmplt. ¶2) — are multi-faceted, and many of the sub-programs have nothing to do with the location of housing developments. As the City noted in its opening brief (at fn. 15), the huge CDBG program also funds a variety of non-housing programs, including family violence prevention and drug abuse programs.

To state fraud "with particularity" as required by Rule 9(b), Hanna must "provide enough detail to give notice of the particular misconduct which is alleged to constitute the fraud charged so that [the City] can defend against the charge." *Ebeid v. Lungwitz,* 616 F.3d 993, 999 (9th Cir. 2010). But Hanna offers no allegation that can be tested empirically by evidence that would show not only that the City was wrong in believing that it was fostering fair housing, but that it ***knew*** it was wrong when it certified otherwise. Hanna cannot contend that he has offered the required specificity by alleging that — over a six year period, in the context of administering four enormous federal programs, in one of the largest municipalities in the country — the City submitted false certifications that it was affirmatively furthering fair housing. Such broad allegations provide virtually no particularity at all.

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[17]Notably, in *Lamers*, on which Hanna relies, the court granted summary judgment for the city of Green Bay because the city's submissions were merely promises of future compliance and there was no credible evidence that the city intended to flout the regulations from the beginning. *Lamers*, *supra,* 168 F.3d at 1018.

The most specificity Hanna offers is the allegation that "the City directed hundreds of millions of dollars in [federal] funds to support the development of affordable housing principally in racially or ethnically segregated, low-opportunity neighborhoods." Cmplt. ¶ 24. But he provides no objective statements demonstrating that the City knowingly "lied." Moreover, while he dismisses the affordable housing approved for racially segregated, low opportunity areas in the Plan for Transformation, developed in connection with *Gautreaux,* as irrelevant (Br. at 15 n.14), he is only offering an ***opinion*** that differs from that of the City — and Judge Aspen. In sum, as Hanna has failed to plead fraud with particularity, the complaint should be dismissed.

IV. CONCLUSION

For the aforesaid reasons, the City respectfully requests that the Court dismiss the complaint.

/s/Thomas E. Johnson
One of the Attorneys
for the City of Chicago

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CERTIFICATE OF SERVICE

Thomas E. Johnson, one of the attorneys for the City of Chicago, hereby certifies that on August 28, 2013, a copy of the *Reply Memorandum in Support of the City of Chicago's Motion to Dismiss* was served upon the attorneys of record in this case by the court's e-filing system.

/s/ Thomas E. Johnson

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT COURT OF ILLINOIS
EASTERN DIVISION

DOROTHY GAUTREAUX, et al., Plaintiffs,	)	
-vs-	)	No. 66 C 1459
CHICAGO HOUSING AUTHORITY, et al., Defendants.	)	Hon. Marvin E. Aspen

AGREED ORDER

This matter having come before the Court on CHA's Motion to Approve the Consent Decree Entered in Cabrini LAC v. CHA, et al., 96 C 6949 and to Permit the Cabrini LAC and the City of Chicago to Intervene, the Motion being supported by the Cabrini LAC, the Gautreaux plaintiffs, the Receiver and the City of Chicago and the Court having found, in accordance with Federal Rule of Civil Procedure 24(a)(2), that both the Cabrini LAC and the City of Chicago have interests relating to the redevelopment of the Cabrini-Green public housing development which is, in part, the subject of this action and are so situated that the disposition of this action may as a practical matter impair or impede the Cabrini LAC and the City of Chicago's ability to protect their respective interests, IT IS HEREBY ORDERED THAT:

1. The Consent Decree entered in Cabrini LAC v. CHA, et al., 96 C 6949, is hereby approved, as required by Section XI of the Decree.

2. The Cabrini LAC and the City of Chicago are hereby granted the right to intervene in this litigation for the limited purpose of allowing these parties to participate fully in any motion filed in this litigation pursuant to paragraph I(F) of the Consent Decree entered in Cabrini LAC v. CHA, et al., 96 C 6949.

United States District Judge

Dated: 9/12/00