UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA *ex rel.* ALBERT C. HANNA, Plaintiff, v. CITY OF CHICAGO, Defendant.	Case No. 1:11-cv-04885 Honorable Andrea R. Wood

PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS AMENDED COMPLAINT

I. INTRODUCTION

Plaintiff-Relator Albert Hanna's Amended Complaint clearly articulates allegations of a fraudulent scheme maintained and perpetuated by the City of Chicago (the "City") in violation of the False Claims Act ("FCA"). Hanna alleges that the City falsely certified compliance with Federal Civil Rights Obligations[1] in order to secure more than $1 billion in federal housing funds between July 20, 2005 and the present (the "False Claims Period").

Exhibit A to the Amended Complaint, Doc. 54-1, graphically displays the profound racial and ethnic segregation in Chicago, and the extent to which profound poverty is overlaid on minority communities. Hanna alleges that the City's policies have resulted in a concentration of subsidized housing in racially impacted areas. Indeed, Hanna alleges that, during the False

[1] Federal Civil Rights Obligations include the requirements arising under Title VI of the Civil Rights Act of 1964, the Fair Housing Act ("FHA"), and the separate obligation to "affirmatively further fair housing" ("AFFH") embodied in several federal laws and regulations. *See* Plaintiff's First Amended Complaint ("Am. Compl."), Doc. 54 at ¶ 2.

Claims Period, 93% of the more than 2,600 housing units built with City-provided federal Block Grant funds were built in Low-Opportunity Areas (defined as having more than 75% minority population and/or greater than a 40% poverty rate). Am. Compl. at ¶ 34. While the City has not seen Hanna's geocoded map supporting this allegation, it essentially concedes that it "describes where affordable housing has been built." Def.'s Mot. to Dismiss ("MTD"), Doc. 56, at 12, n. 6.

The Amended Complaint alleges not simply that the City's efforts to combat racial and ethnic segregation have been unsuccessful. MTD at 6, 10-11. Rather, Hanna alleges that the City—through the Mayor's office, the City Council and agencies that administer funding, zoning and land use—adopted and enforced policies that had the purpose and effect of increasing segregation, even as the City annually certified to the U.S. Department of Housing and Urban Development ("HUD") that it was complying with Federal Civil Rights Obligations. Am. Compl. ¶¶ 1-5, 62-69, 73-77. Further, through its periodic submissions and requests for payment to HUD, the City concealed the existence and extent of fair housing impediments, and failed to take appropriate actions to overcome those impediments with respect to households of color. *Id*. at ¶¶ 70-74, 78.

The City's contention that Hanna has not pleaded with sufficient specificity pursuant to Federal Rule of Civil Procedure 9(b) is rooted in a fundamental misunderstanding of Hanna's claims and the City's misguided desire to reduce them to individual complaints about individual affordable housing developments. The City's contention fails because Hanna's Amended Complaint does, in fact, establish the "who, what, where, when, and how" of a broad and sustained fraudulent scheme with respect to the City's knowingly false certifications of

compliance with its Federal Civil Rights Obligations. *See AnchorBank, FSB v. Hofer*, 649 F.3d 610, 615 (7th Cir. 2011).[2]

The City next acknowledges that the Court's subject matter jurisdiction is not yet in question, but goes on to argue that Hanna's allegations have been previously publicly disclosed, thus barring his FCA claims pursuant to 31 U.S.C. § 3730(e)(4). As the Court recognized in its Order of September 25, 2014, Doc. 49, Hanna sufficiently pleads subject matter jurisdiction, and the City has identified no instances of previous public disclosure under the FCA. The City's argument regarding jurisdiction is, therefore, unavailing and must be saved for another day.

II. STATUTORY AND REGULATORY FRAMEWORK

A. The False Claims Act

Recognizing that the Government lacks the resources to closely monitor the myriad uses of federal funds, Congress enacted the FCA's *qui tam* provision to allow private persons, termed "relators," to "aid the rooting out of fraud," and "serve as a posse of *ad hoc* deputies to uncover and prosecute frauds against the government." *United States ex rel. Grubbs v. Kanneganti*, 565 F.3d 180, 184 (5th Cir. 2009) (internal quotation marks omitted). In discussing the FCA's rationale, Judge Easterbrook noted that the federal government "is entitled to guard the public fisc against schemes designed to take advantage of overworked, harried, or inattentive disbursing officers; the False Claims Act does this by insisting that persons who send bills to the Treasury tell the truth." *United States v. Rogan*, 517 F.3d 449, 452 (7th Cir. 2008). The *qui tam* provision reflects an acknowledgement by Congress that federal auditors may not be able to devote scarce

[2] For the reasons outlined below, Hanna meets the ordinary Rule 9(b) standard. But courts have suggested that where, as here, an "extended fraudulent schem[e]" is alleged, the pleading standard is relaxed. *United States ex rel. Salmeron v. Enter. Recovery Sys., Inc.*, 464 F. Supp. 2d 766, 768 (N.D. Ill. 2006) (citing *Midwest Grinding Co., Inc. v. Spitz*, 976 F.2d 1016, 1020 (7th Cir.1992)). Hanna meets that standard by offering a "general outline" sufficient to put the City on notice of his claims, a metric the Amended Complaint has certainly surpassed.

resources to investigate every suspected case of fraud and addresses that resource gap by establishing a public-private enforcement partnership.

B. The City's Federal Civil Rights Obligations

As a recipient of federal funds, *see, e.g.*, Am. Compl. ¶¶ 1, 6, 15, 16, the City must each year and in writing certify its compliance with current and prospective Federal Rights Obligations. *Id*. ¶ 18. These obligations include certifying that the City will administer each grant in compliance with Title VI, 42 U.S.C. § 2000d, *et seq.* and its implementing regulations at 24 C.F.R. Part 1, *id*. ¶ 20. The City must also certify its compliance with the FHA, 42 U.S.C. §3601 *et seq.*, and its implementing regulations at 24 C.F.R. Part 100, *id*. ¶ 21, which prohibit discrimination on the basis of, *inter alia*, race, color, and national origin. In addition, the City must certify to HUD that each "grant will be conducted and administered in conformity with the Civil Rights Act of 1964 and the Fair Housing Act, and the grantee will affirmatively further fair housing ["AFFH"]." 42 U.S.C. §§ 3608(e)(5), 5304(b)(2); *see also* 24 C.F.R. §§ 91.225, 570.601, 570.602, 903.7(o); Am. Compl. ¶ 22.

With each annual application for such funds, the City submits its AFFH certification, which obligates it to identify impediments to fair housing choice and to take actions to overcome the effects of any identified impediments.[3] The City's certifications are "not a mere boilerplate formality, but rather . . . a substantive requirement, rooted in the history and purpose of the fair housing laws and regulations." *United States ex rel. Anti-Discrimination Ctr. of Metro N.Y., Inc. v. Westchester Cnty., N.Y.*, 668 F. Supp. 2d 548, 569 (S.D.N.Y. 2009). Certifications based on analyses that do not examine impediments faced by African Americans and Latinos are false certifications. *Id.* at 561-62. HUD's AFFH regulations "unambiguously impose mandatory

[3] *See 24* C.F.R. §§ 91.225(a)(1), 570.601(a)(2); Office of Fair Housing and Equal Opportunity, U.S. Dept. of Housing and Urban Dev., *Fair Housing Planning Guide: Vol. 1*, [HUD-1582B-FHEO] at 2-7 (1996).

requirements on the [recipients] not only to certify their compliance with fair housing laws, but actually to comply." *Langlois v. Abington Hous. Auth.*, 234 F. Supp. 2d 33, 73, 75 (D. Mass. 2002) (emphasis omitted). If the City was aware that segregation imposed fair housing impediments, it was required to take steps to "overcome" them at the inception of those grants and throughout their administration. A certification that it has complied with that obligation, when it has not done so and its programs have actually made those impediments worse, as pled in the Complaint, is a false claim made to secure federal funds.

III. STANDARDS OF REVIEW ON RULE 12(B)(6) MOTION TO DISMISS

In considering a motion to dismiss, the Court must accept all well-pled facts in the Complaint as true and view them in the light most favorable to Relator. *Gibson v. City of Chicago*, 910 F.2d 1510, 1520-21 (7th Cir. 1990). The question is "not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims. Rule 12(b)(6) should be employed only when the complaint does not present a legal claim." *Smith v. Cash Store Mgmt. Inc.*, 195 F.3d 325, 327 (7th Cir.1999) (internal citation and quotation omitted). This analysis is the same even for a complaint in which the pleading standards are heightened by Rule 9(b). *Makor Issues & Rights, Ltd. v. Tellabs Inc.*, 513 F.3d 702, 705 (7th Cir. 2008). To "say that fraud has been *pleaded* with particularity is not to say that it has been *proved* (nor is proof part of the pleading requirement)." *United States ex rel. Lusby v. Rolls-Royce Corp.*, 570 F.3d 849, 855 (7th Cir. 2009).

IV. ARGUMENT

A. The Amended Complaint Satisfies Fed. R. Civ. P. 9(b)

Rule 9(b) requires a pleading to "state with particularity the circumstances constituting fraud." Fed. R. Civ. P. 9(b). This "ordinarily requires describing the who, what, when, where,

and how of the fraud." *AnchorBank, FSB*, 649 F.3d at 615 (internal citation and quotation omitted). In describing the fraudulent scheme at issue here, Hanna has met that heightened standard. Hanna has alleged the *who* (the Mayor or his designee); the *what* (the fraud perpetuated by the City, costing taxpayers more than $1 billion); the *how* and *where* (the submission of specific documents to HUD certifying compliance with the City's Federal Civil Rights Obligations); and the *when* (December of each year during the False Claims Period).

Specific paragraphs in the Amended Complaint relate to each factor in this "first paragraph of any newspaper story" standard. *United States ex rel. Garst v. Lockheed-Martin Corp*., 328 F.3d 374, 376 (7th Cir. 2003) (internal citation and quotation omitted). The Amended Complaint identifies the Mayor of Chicago or his designees[4] as the persons *who* are responsible for carrying out the fraudulent scheme. Am. Compl. at ¶¶ 1, 7, 16, 19, 62, 68-78. The Amended Complaint then details the *what*: the City defrauded the federal government and taxpayers of, in total, over $1 billion in HUD funds, specifically from the CDBG, HOME, ESG, and HOPWA programs. *Id*. at ¶¶ 1, 15-17, 62, 63-69, 76-78, 80, 83-86.

Most critically, Hanna explains in significant detail *how*, *where*, and *when* the fraudulent scheme operated: in each December of the False Claims Period, the City repeatedly certified to HUD in various submissions that it complied with its Federal Civil Rights Obligations, when in fact it was pursuing policies that it knew exacerbated segregation and decreased housing options in Areas of Opportunity. In addition to annual certifications, Hanna also identifies periodic requests for payment or reimbursement, made between certifications, that constitute implied certifications of compliance with the Federal Civil Rights Obligations. Am. Compl. at ¶¶ 68, 74,

[4] The Mayor cannot act on his own, so the Amended Complaint should be read to include other actors, including those who administer the City departments that control funding, zoning and land use, as well as aldermen in Areas of Opportunity (which are identified on Doc. 54-1, the exhibit attached to the Amended Complaint).

79. As Hanna alleges, these policies include concentrating City-funded affordable housing for families in Low-Opportunity Areas (*id*. at ¶¶ 27-28); permitting undue influence by aldermen in siting and zoning decisions (*id*. at ¶¶ 30, 41-47); passing and enforcing the 2004 Zoning Ordinance, which restricted affordable housing opportunities in more desirable neighborhoods (*id*. at ¶¶ 48-51); and maintaining a practice of downzoning and using the landmark designation process to insulate Areas of Opportunity from affordable housing development (*id*. at ¶¶ 53-60). These policies, each detailed in the Amended Complaint, had the predictable and cumulative effect of pushing "the development and renovation of affordable, multifamily rental housing" relied upon by African Americans and Latinos into "already-segregated and impoverished Low-Opportunity Areas." *Id*. at ¶¶ 50, 61.[5]

Despite taking actions or permitting conditions that maintained segregation, and even *worsened* fair housing outcomes, as alleged, the City represented to the federal government that it had fulfilled its Federal Civil Rights Obligations. The following facts directly support Hanna's allegations of fraud through knowing concealment or knowing overt actions:

- In its 2005-2009 and 2010-2014 Consolidated Plans, the City "minimized or limited its presentation of racial and ethnic segregation both in narrative and mapped format, thereby concealing from HUD" the extent of the City's segregation, and caused HUD to believe that the City would use its federal funds to address fair housing impediments (*id*. at ¶¶ 64, 70-71);

- The City deliberately ignored directions from HUD to "produce and publish maps showing areas of racial and ethnic segregation" in order "to obscure from HUD and public view the extent to which its programs and policies have perpetuated" segregation (*id*. at ¶ 72);

[5] According to the City, "[t]hese programs [CSBG, HOME, ESG and HOPWA] have been approved by the district court as a desegregation remedy," citing to *Gautreaux v. CHA*, 491 F.3d 649 (7th Cir. 2007). MTD at 8 n.3. The defendant in *Gautreaux*, the Chicago Housing Authority ("CHA"), is a separate legal entity from the City, and the City's role in the developments built as a result of the litigation is at most as an investor. Furthermore, because the parties agreed as to where to place the mixed-income developments referred to by the City, the court in *Gautreaux* had a very minor role in "approving" any programs. *See id*. at 652-53 (noting that the CHA had to repeatedly negotiate new building plans with the plaintiffs, because new construction was consistently located on the site of old high-rise projects, which were racially isolated, and without the plaintiffs' approval the CHA's actions would have violated the *Gautreaux* remedial order).

- In December of each year during the False Claims Period, the City "executed certifications of compliance with the Federal Civil Rights Obligations" and "[a]fter making said certifications and entering into funding contracts, on a monthly or quarterly basis, the City made demands for payment of the funds that it had been awarded. Such demands amounted to representations that the City was in compliance with the Federal Civil Rights Obligations" (*id*. at ¶ 68);

- Through its submitted Annual Action Plans, Consolidated Annual Performance Evaluation Reports and annual certifications of compliance with Title VI, the FHA, and its AFFH obligations, "the City caused HUD and the public to believe that it was in compliance" with its federal obligations (*id*. at ¶ 73);

- "Through its annual Applications for Federal Assistance and Grant Agreements, the City caused HUD and the public to believe that it and its sub-recipients were complying with its obligation under Title VI, the FHA and its AFFH obligation" (*id*. at ¶ 74);

- The City engaged in this fraudulent conduct knowingly and for the purpose of securing federal program funds (*id*. at ¶¶ 75, 80, 86).

Contrary to the City's claims, *see* MTD at 10, n. 4, the Amended Complaint clearly alleges that the City violated its AFFH certifications by failing to identify fair housing impediments flowing from racial and ethnic segregation, Am. Compl. ¶¶ 27, 37, 38, and by failing to operate its housing programs in a fashion to "overcome the effects" of those impediments, *id*. at ¶ 27; *see also* 24 C.F.R. §§ 91.225(a)(1), 570.601(a)(2). That is, even while acknowledging Chicago's high levels of segregation, Am. Compl. at ¶ 14, the City concealed or ignored fair housing impediments affecting minority families. *Id*. at ¶¶ 28, 37, 38.

These allegations provide the City fair notice of an alleged pattern of conduct by highlighting how certain documents were used and certain actions taken in furtherance of the fraudulent certification scheme. In particular, the Amended Complaint identifies the City's two Consolidated Plans submitted during the False Claims Period, its Annual Action Plans, Applications for Federal Assistance and Grant Agreements (and the certifications contained therein), and Consolidated Annual Performance Evaluation Reports as documents containing

false compliance information. Am. Compl. at ¶¶ 70, 73, 74. This level of specificity provides the City more than sufficient "notice of the particular misconduct which is alleged to constitute the fraud charged so that [it] can defend against the charge." *Ebeid ex rel. United States v. Lungwitz*, 616 F.3d 993, 999 (9th Cir. 2010). Accordingly, Hanna's "accusations are not vague"—he has detailed "the nature of the charge" and the City "has been told exactly what the fraud entails." *Lusby*, 570 F.3d at 854-55.

While Hanna meets the heightened journalistic standard of Rule 9(b), the case law of this circuit recognizes that in "dealing with extended fraudulent schemes involving a large volume of transactions," a party "is required to provide only a 'general outline' of the alleged scheme." *Salmeron*, 464 F. Supp. 2d at 768 (citing *Spitz*, 976 F.2d at 1020). FCA cases describing such conduct may explain the circumstances constituting fraud "without having to provide the chapter-and-verse itemization of individual instances that form the pattern." *United States ex rel. Salmeron v. Enter. Recovery Sys., Inc.*, No. 05-C-4453, 2008 WL 2021359, at *1 (N.D. Ill. May 9, 2008).

B. The City's Arguments That Hanna Does Not Meet Rule 9(b) Are Unavailing

The City presents three discernible arguments to support its contention that Hanna fails to meet the standard of Rule 9(b). First, the City argues that Hanna's burden is to identify individual instances of affordable housing projects affected by City policies, as opposed to identifying an overall scheme, and to plead facts supporting fraud with respect to each such instance. MTD at 4, 7.[6] But the City's argument misses the point. Hanna does not allege that

[6] The facts of the cases cited by the City on this point are distinguishable. In *Garst*, the Seventh Circuit upheld dismissal of the relator's complaint because its length and complexity made it "unintelligible" and it failed to answer the basic questions: "what were the statements and why were they false?" 328 F.3d at 377. In *U.S. ex rel. Gross v. AIDS Research Alliance-Chicago*, the Court affirmed the complaint's dismissal because it identified an "essentially undecipherable listing of various 'forms, written reports and study results' the defendants are alleged to have filed with the government at some point—the pleading does not say when." 415 F.3d 601, 604-05 (7th Cir. 2005). The

the approval or denial of each specific project constitutes a fraud. Rather, the fraud resides in the operation of the City's housing programs to exacerbate segregation while simultaneously assuring the federal government that it was using its federal funds and other resources to "overcome" segregation and to expand fair housing choice for minority families.

As established *supra*, Hanna has pleaded the existence of a pattern of fraudulent behavior—namely, the City's consistent, knowingly false assertions of civil rights compliance. To require Hanna "to provide more detail at the pleading stage would be unrealistically demanding." *Salmeron*, 464 F. Supp. 2d at 768; *see also Ebeid*, 616 F.3d at 999 (noting that a relator is "not required to allege all facts supporting each and every instance" of suspected fraud (internal citations omitted)). Moreover, the FCA does not require pleading "specific intent." 31 U.S.C. § 3729(b)(1)(B). Hanna is obliged only to plead the who, what, where, when, and how as to this broader scheme. The City points to *U.S. ex rel Thulin v. Shopko Stores Operating Co., LLC*, as an exemplar of proper Rule 9(b) pleading because the relator in that case attached printouts of 31 transactions to demonstrate the fraud. 771 F.3d 994, 996 (7th Cir. 2014). Here, however, as in *Thulin*, Hanna has highlighted specific documents containing the fraudulent statements. *See* Am. Compl. ¶¶ 64, 68, 70-77.

Further, Hanna has identified the manner in which the City's policies affecting affordable housing have maintained and increased racial and ethnic segregation in Chicago, and reinforced fair housing impediments for minority families. And he has adequately alleged that the City adopted and pursued such policies knowing that they were contrary to its certifications of compliance with its Federal Civil Rights Obligations. To the extent that information about the siting of specific affordable housing projects or which individual aldermen exercised their

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complaint in *Gross* also "failed to allege that any particular certification of regulatory compliance was a *condition* of payment of government money." *Id.* Hanna's Amended Complaint suffers from no such deficiencies.

privilege in a particular case remains within the City's exclusive knowledge and control, "information asymmetries" preclude Hanna "from offering more detail." *Pirelli Armstrong Tire Corp. Retiree Med. Benefits Trust v. Walgreen Co.*, 631 F.3d 436, 443 (7th Cir. 2011).[7]

Even in cases where the relator is a classic insider, courts have not required the level of detail that the City calls for here. For instance, in *Lusby*, a former engineer for Rolls-Royce alleged that the company was manufacturing turboprop engines for the U.S. military improperly, yet certifying to the United States government that the engines conformed to the required specifications. 570 F.3d at 850. The district court held that Lusby had not pleaded fraud with the requisite particularity, because he had not produced the actual invoices Rolls-Royce sent to the government, along with the allegedly false representations contained in them. *Id*. at 854. The Seventh Circuit disagreed, finding that while "it is essential to show a false statement . . . much knowledge is inferential." *Id*. The court agreed with Lusby that, because federal regulations required Rolls-Royce to submit with each request for payment a form certifying compliance with "all applicable requirements," and because the military paid Rolls-Royce for the turboprop engines, Rolls-Royce "*must* have submitted at least one such certificate." *Id*. Thus, the court overturned the district court's dismissal of Lusby's suit, finding that he had pleaded fraud with sufficient particularity. *Id*. at 855.

Second, the City argues that the Amended Complaint's allegations "do not tell us, even in the barest terms, whether the City was 'lying' when it said it would administer these programs

[7] When assessing allegations of fraud in such circumstances, "courts should not be 'overly rigid' about what information is required." *Cunningham Charter Corp. v. Learjet, Inc.*, No. 07-CV-00233-DRH, 2011 WL 2633887, at *5 (S.D. Ill. July 5, 2011) (citing *Pirelli Armstrong*, 631 F.3d at 443). Indeed, in cases like this one, where the details "are in the exclusive possession" of the defendant, a relator-plaintiff is simply "not required to allege them under Rule 9(b)." *Winthrop Res. Corp. v. Lacrad Int'l Corp.*, No. 01-C-4785, 2002 WL 24248, at *2 (N.D. Ill. Jan. 7, 2002).

in compliance with the fair housing rules." MTD at 8. This contention misses the mark, as Hanna's complaint provides more than "sufficient underlying facts from which a court may reasonably infer" that the City "acted with the requisite state of mind." *United States ex rel. Heathcote Holdings Corp, Inc. v. Helen of Troy, Ltd.*, No. 11-C-526, 2011 WL 1465445, at *1 (N.D. Ill. Apr. 18, 2011) (internal citations omitted). The Amended Complaint alleges that the City was well aware of its highly segregated residential housing patterns, but that, despite this awareness, it directed hundreds of millions of dollars in federal funds to subsidize the development of affordable housing in racially segregated, high poverty areas. Am. Compl. ¶¶ 14, 24-27, 31-35.[8] Additionally, the Amended Complaint alleges that the City's downzoning and landmarking policies and practices, and its meek acquiescence to aldermanic privilege in land use decisions,[9] have further exacerbated racial and ethnic segregation. *Id*. ¶¶ 39-61. That the City knowingly pursued these segregative policies while simultaneously certifying to the federal government that it was taking steps to ameliorate residential segregation certainly, if proven, constitutes a violation of the FCA.

Further, the City is simply wrong to suggest that the focus of the FCA is limited to the moment each December when the City's Mayor or his designee signed the certifications of compliance with the Federal Civil Rights Obligations. *See* MTD at 9. Were that the rule, the

[8] Citing *U.S. ex rel. Turner v. Michaelis Jackson & Associates, L.L.C.*, No. 03-CV-4219-JPG, 2011 WL 13510 (S.D. Ill. Jan. 4, 2011) and *U.S. ex rel. Kennedy v. Aventis Pharm., Inc.*, 610 F. Supp. 2d 938, 946 (N.D. Ill. 2009), the City suggests that Hanna's complaint is misplaced because the FCA "is not to be used as a way to contest municipal program initiatives or efforts to comply with statutory requirements that are unsuccessful." MTD at 6. Contrary to the City's suggestion, its submissions to the federal government throughout the False Claims Period were not merely "inaccurate." *Turner*, 2011 WL 13510, at *6. Nor were the City's certifications exclusively "forward-looking statement[s]." *Kennedy*, 610 F. Supp. 2d at 946. Rather, the annual certifications are preconditions to the receipt of federal funds, and the City's periodic requests for payment during each program year amounted to an implied certification of compliance. *Westchester*, 668 F. Supp. 2d at 566-67.

[9] Hanna does not claim to have uncovered the existence of aldermanic privilege in Chicago. Rather, Hanna alleges that the privilege was exercised pervasively during the False Claim Period to discourage and prevent the development of affordable housing in Areas of Opportunity and to concentrate it in Low-Opportunity Areas.

government could never recover for fraud committed between annual certifications. When this very issue arose in *Westchester*, Judge Cote made clear that the FCA's focus was much broader, and that "periodic requests for payment made between the annual certifications are properly considered implied false certifications." 668 F. Supp. 2d at 566-67. In other words, with respect to the City's monthly or other requests for payment under the grants, HUD is "entitled to guard the public fisc against schemes designed to take advantage of overworked, harried, or inattentive disbursing officers." *Rogan*, 517 F.3d at 452.[10]

Finally, the City argues that "the FCA is not a vehicle to litigate fair housing claims" or objections to land use policy. MTD at 9. The City then claims that the Amended Complaint fails to allege intentional discrimination and contends that the zoning practices highlighted, including landmark designation and downzoning, are not necessarily indicative of discriminatory intent. Hanna, however, has not set out to litigate claims under the FHA or to prove intentional discrimination with respect to individual City actions or decisions affecting affordable housing. Rather, the Amended Complaint alleges that while the City purports to be taking steps to create fair housing opportunities, it was—in purpose and effect—exacerbating and perpetuating segregation. It is simply immaterial whether Hanna pleaded that the City engaged in actions such as downzoning or landmarking with the express propose of discriminating. *See* MTD at 8. The gravamen of Hanna's claim is deception on a broad scale, not discrimination on a narrow scale.

[10] As the *Lusby* decision demonstrates, one can assume that the City submitted requests for payment from the federal treasury in between formal Federal Civil Rights Obligations certifications, because the City received periodic disbursements. Each such request by the City served as an assertion of its entitlement to payment on the basis of compliance with its Federal Civil Rights Obligations. Accordingly, though Hanna may not have copies of these interim requests for payment, the City's receipt of funds serves as proof that the City made false assertions of compliance, both explicitly and implicitly.

The City suggests that because the duty to affirmatively further fair housing is "amorphous" and its fair housing obligations are not explicitly defined, it is "all but impossible to suggest the City can commit a knowing and fraudulent 'lie' about its prospective compliance." MTD at 10. This assertion is disingenuous. Courts have given basic definition to the FHA's "affirmatively furthering" mandate, observing in one case that the "broad goal underlying this provision" is "an intent that HUD do more than simply not discriminate itself but rather use its grant programs to assist in ending discrimination and segregation." *MHANY Mgmt. Inc. v. Cnty. of Nassau*, 843 F. Supp. 2d 287, 336 (E.D.N.Y. 2012); *accord N.A.A.C.P. v. Sec'y of Hous. & Urban Dev.*, 817 F.2d 149, 155 (1st Cir. 1987) (Breyer, J.). By contrast, the City's housing policies are alleged to do the exact opposite: perpetuating segregation and reinforcing neighborhoods' racial stratification. While the complete content of an entity's duty to affirmatively further fair housing may be not be fully defined, the City of Chicago's failure to comply with its affirmative obligations is, as alleged, blatant and unambiguous.[11] Accordingly, the City's repeated certifications were indeed "objective falsehood[s]." *United States ex rel. Yannacopoulos v. Gen. Dynamics*, 652 F.3d 818, 833-36 (7th Cir. 2011).

C. As the City Admits, Hanna Has Pled Facts Sufficient to Establish Subject Matter Jurisdiction, and the Court's Jurisdiction Is Not at Issue at This Time

While acknowledging that "the City is not in a position to demonstrate that the relator's claims have been publicly disclosed and that the Court therefore lacks subject matter

[11] The City's suggestion that the duty to affirmatively further fair housing as expressed in the FHA is too "vague and ambiguous" to serve as the basis for an FCA claim is not accurate. First, as the City acknowledges, Westchester's failure to affirmatively further recently served as the basis for a successful FCA claim. *Westchester*, 668 F. Supp. 2d at 571. Second, the cases cited by the City are beside the point. Each focuses on the question of whether § 3608(e)(5) confers a private right of action and discusses the FHA's affirmatively furthering mandate only in that context. None of these cases stand for the proposition that HUD cannot enforce the duty as to recipients of its funding.

jurisdiction," MTD. at 11, the City goes on to spend almost three pages arguing that Hanna's claims have been publicly disclosed, and that he is not an original source. *See id*. at 11-14. However, this Court's ruling on the City's motion to dismiss Hanna's original complaint holds true with his amended complaint: "Hanna's complaint is facially sufficient in its allegation of subject matter jurisdiction and no evidence of prior public disclosure has, as of yet, triggered an obligation for Hanna to attempt to negate an inference of a jurisdictional bar," such that the Court has jurisdiction pursuant to 31 U.S.C. § 3730(e)(4) of the FCA. Order, Doc. 49, at 3.

The City has not submitted any evidence that Hanna's allegations regarding the City's fraud in certifying compliance with its AFFH obligations have been previously publicly disclosed.[12] Because Hanna has sufficiently pleaded jurisdiction, and those allegations must be accepted as true, the public disclosure bar does not deny the Court subject matter jurisdiction.

V. CONCLUSION

For the foregoing reasons, the City's Motion to Dismiss should be denied.

[12] While the City offers a brief history of the relationship of aldermanic privilege to fair housing, and cites to regulations and a law review article regarding zoning, these references come nowhere near the "public disclosure" required by § 3730(e)(4) to create a jurisdictional bar. A *qui tam* action is barred only when it is based on publicly disclosed allegations or transactions of fraud, not when it is based in part on information in the public domain. *U.S. ex rel. Absher et al. v. Momence Meadows Nursing Ctr., Inc.*, 764 F.3d 699, 707 (7th Cir. 2014); *U.S. ex rel. Springfield Terminal Ry. Co. v. Quinn*, 14 F.3d 645, 653 (D.C. Cir. 1994).

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CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of December, 2014, I will cause the foregoing to be electronically filed with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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