

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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UNITED STATES OF AMERICA <i>ex rel.</i>		)	
TZAC, INC.,		)	
		)	
Plaintiff,		)	
		)	
v.		)	Civil Action No. 15-2001 (RC)
		)	
THE CARTER CENTER, INC.,		)	
		)	
Defendant.		)	
<hr/>		)	

**UNITED STATES’ NOTICE REGARDING  
DISMISSAL UNDER SECTION 3730(c)(2)(A)**

The United States of America (“United States” or “Government”), by and through its undersigned counsel and pursuant to the Court’s Minute Order of April 23, 2018, respectfully submits this Notice regarding its motion to dismiss this action under 31 U.S.C. § 3730(c)(2)(A) (ECF No. 14).

**PROCEDURAL HISTORY**

Relator TZAC, Inc. (“TZAC”) commenced this action on or about November 16, 2015, under the *qui tam* provisions of the False Claims Act (“FCA”). *See* Compl. (ECF No. 1). After conducting a diligent investigation, the Government determined that it was in the best interests of the United States to seek the dismissal of this action under Section 3730(c)(2)(A) of Title 31. On November 2, 2017, the United States filed a motion to dismiss. *See* Mot. to Dismiss (ECF No. 14).

Thereafter, in January 2018, the Court lifted the seal over this action, scheduled the hearing to which TZAC as a relator is entitled under Section 3730(c)(2)(A) and established certain procedures for that hearing. *See* Order of 1/9/2018 (ECF No. 17); Min. Order of 1/24/2018. The Court scheduled TZAC’s Section 3730(c)(2)(A) hearing for April 25, 2018. *See* Min. Order of

1/24/2018. Two days before the scheduled hearing, TZAC filed a motion to withdraw its hearing request, opting instead to conduct an informal meeting with counsel for the United States in this action. *See* Mot. to Withdraw Hearing Request (ECF No. 21). The Court granted TZAC's motion and directed the United States to file a notice to inform the Court of its final position regarding its motion to dismiss by May 31, 2018. *See* Min. Order of 4/23/2018. Counsel for TZAC met with counsel for the United States on May 24, 2018.

### **DISCUSSION**

The United States has considered the presentation made by counsel for TZAC at the May 24 meeting and continues to believe in its “virtually ‘unfettered’ discretion” that it is in the best interests of the United States to dismiss this case. *United States ex rel. Hoyte v. Am. Nat’l Red Cross*, 518 F.3d 61, 65 (D.C. Cir. 2008) (“the function of a hearing when the relator requests one is simply to give the relator a formal opportunity to convince the government not to end the case”); *Swift v. United States*, 318 F.3d 250, 251-54 (D.C. Cir. 2003) (“Nothing in § 3730(c)(2)(A) purports to deprive the Executive Branch of its historical prerogative to decide which cases should go forward in the name of the United States.”).

Accordingly, the United States requests that this Court dismiss this action with prejudice as to Relator TZAC and without prejudice to the United States. *See, e.g., United States ex rel. Wickliffe v. EMC Corp.*, Civ. A. No. 06-0064, 2010 WL 3662467, at \*3 (D. Utah Sept. 15, 2010) (dismissing FCA claims under § 3730(c)(2)(A) with prejudice as to relator and without prejudice to the United States), *aff’d* 473 Fed. App’x 849, 854 (10th Cir. 2012); *United States ex rel. Fay v. Northrop Grumman Corp.*, Civ. A. No. 06-0581, 2008 WL 877180, at \*10 (D. Colo. Mar. 27, 2008) (same). Relator has had a full opportunity to present its allegations to the United States, and the Government believes that such allegations should not proceed in the name of the United States. Even so, a Section 3730(c)(2)(A) dismissal is not an adjudication on the merits as to any claims of

the United States, and the United States had no role in drafting the allegations in the Complaint. Consequently, a dismissal with prejudice to Relator and without prejudice to the United States is appropriate. *See Fay*, 2008 WL 877180, at \*10 (discussing issue, deciding that Section 3730(c)(2)(A) dismissal should be without prejudice as to the United States, and honoring Government's request to dismiss relator's claims with prejudice).

\* \* \*

**CONCLUSION**

For the foregoing reasons and those set forth in the United States' motion to dismiss, the United States respectfully requests that this action be dismissed with prejudice as to Relator TZAC and without prejudice as to the United States. A proposed order is enclosed herewith.

Dated: May 31, 2018  
Washington, DC

Respectfully submitted,

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