

**APPEAL TO THE ILLINOIS APPELLATE COURT, FOURTH DISTRICT
 FROM THE CIRCUIT COURT OF SANGAMON COUNTY, ILLINOIS**

PEOPLE OF THE STATE OF	)	
ILLINOIS ex rel., EMILY FOX,	)	
	)	
Relator/Appellant,	)	
	)	
v.	)	Case No. 21 L 000053
	)	
JENNY THORNLEY,	)	Hon. Adam Giganti
	)	
Defendant/Appellee.	)	

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN, pursuant to Illinois Supreme Court Rule 303(a), that Relator Emily Fox, hereby appeals to the Appellate Court of Illinois, Fourth Judicial District, from the Order entered in this cause granting the State of Illinois' Motion to Dismiss (the "Order"). This case was maintained under seal and records were not publicly available until a July 8, 2022, Order by the Circuit Court. Although the Order appealed from was dated March 7, 2022, the parties were not provided a copy of it until two days before the file was unsealed, *i.e.*, on July 6, 2022. Prior to that date and/or the date the case file was made publicly available, the Order had not become effective consistent with Illinois Supreme Court holdings that "'to protect [the interests of the litigants and public] it is necessary that they be apprised that a decision has been made by the judge and what the decision is. They would be so apprised when it has been expressed publicly, in words and at the situs of the case.'" *Granite City Lodge No. 272, Loyal Order of Moose v. Granite City*, 141 Ill. 2d 122, 126 (brackets in original) (1990), citing *People ex rel. Schwartz v. Fagerholm*, 17 Ill. 2d 131, 135-36 (1959).

Copies of the Order and the July 8, 2022, unsealing Order are attached hereto as Exhibits A and B, respectively, and incorporated herein.¹

WHEREFORE, Relator prays that the Appellate Court reverse the Circuit Court's Order and reinstate the Complaint in this case, allowing the Relator to proceed, and for such other relief as the Court deems necessary and just.

Dated: July 21, 2022

Respectfully Submitted,

EMILY FOX, RELATOR

By: /s/ Robert M. Andalman
One of her attorneys

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¹ Although the Order provided a procedure for unsealing the case in March of 2022, the parties were not apprised at that time and the Clerk did not in fact unseal the docket until after the July 8, 2022, Order was entered.

CERTIFICATE OF FILING AND SERVICE

I, Robert Andelman, an attorney, certify that on July 21, 2022, I electronically filed the foregoing ***NOTICE OF APPEAL*** with the Clerk of the Circuit Court for the Seventh Judicial Circuit, Sangamon County, Illinois by using the Odyssey eFileIL system.

I further certify that on July 21, 2022, the foregoing ***NOTICE OF APPEAL*** was served by email and via the Odyssey eFileIL system on the below named participants:

Eileen E. Boyle Perich (ARDC No. [REDACTED])
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I further certify that on July 21, 2022, the foregoing ***NOTICE OF APPEAL*** was served by certified mail on the below named individual.

Jenny Thornley
[REDACTED]

Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information, and belief.

/s/ Robert M. Andelman

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EXHIBIT

A

**IN THE CIRCUIT COURT FOR THE SEVENTH JUDICIAL CIRCUIT
SANGAMON COUNTY, ILLINOIS**

Suppressed,

Plaintiff,

v.

Suppressed,

Defendant.

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)

Case No. 2021 L 000053

FILED

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OPINION AND ORDER

This cause is before the Court on a motion to dismiss the complaint of [REDACTED] the Clerk of the Circuit Court

State of Illinois (the "State"), pursuant to the State's authority under the Illinois False Claims Act, 740 ILCS 175/4(c)(2)(A). The relator, Emily Fox (the "Relator"), who filed the complaint, objects to dismissal. The Court has considered the written submissions and oral arguments by the State and the Relator, and for the reasons set forth below, the Court grants the State's motion.

BACKGROUND¹

On April 9, 2021, the Relator filed a two-count complaint pursuant to the Illinois False Claims Act ("IFCA") under seal and served a copy of the complaint on the State. *See* 740 ILCS 175/4(b)(2). Broadly speaking, the complaint alleges that the defendant, Jenny Thornley ("Thornley"), a former State employee, engaged in resume fraud, timekeeping fraud, travel and expense reimbursement fraud, and worker's compensation fraud during her employment with the Illinois State Police Merit Board (the "Merit Board"). The complaint alleges that Thornley's conduct violates the IFCA.

¹ Given that the State's motion to dismiss arises under 740 ILCS 175/4(c)(2)(A), rather than Section 2-615 of the Code of Civil Procedure, 735 ILCS 5/2-615, the Court is not obligated to accept the allegations of the complaint as true or to avoid consideration of materials outside the scope of the complaint and supporting exhibits. Regardless, the Court's recitation of the Relator's allegations is based on the Relator's complaint, the exhibits to the complaint, and the letter and materials the Relator submitted to the State pursuant to 740 ILCS 175/4(b)(2), all of which are in the record before the Court.

Count I alleges that Thornley violated Section 3(a)(1)(B) of the IFCA by knowingly creating false or fraudulent timekeeping records and travel vouchers that caused the State to pay her unearned overtime and improper reimbursements. Count II alleges that Thornley violated Section 3(a)(1)(A) of the IFCA by knowingly inputting false data into the State's payroll system to obtain payment for overtime hours she did not work, and by submitting fraudulent reimbursement requests for travel that did not occur and items for personal use. Contemporaneous with the filing of the complaint, the Relator also submitted an 8-page disclosure letter to the State and 27 exhibits that the Relator characterized as "substantially all material evidence" about the allegations in the complaint. 740 ILCS 175/4(b)(2).

The Relator worked with Thornley at the Merit Board prior to Thornley's termination from the agency. During the time period relevant to the complaint, the Relator was a Program Director at the Merit Board. The Relator alleges that Thornley defrauded the State in the following ways during her employment with the Merit Board:

- 1) By falsely representing that she completed two, two-year courses at the University of Illinois-Urbana-Champaign and Robert Morris University (Compl. ¶ 11);
- 2) By submitting into the State's central payroll system false and unapproved requests for overtime work and pay between 2014 and 2019 (Compl. ¶¶ 24–29);
- 3) By creating false documents that purported to roll-over unused compensatory time from prior fiscal years and falsely underreporting the compensatory time she was using (Compl. ¶ 23);
- 4) By submitting false travel vouchers and invoices for reimbursement for trips that Thornley did not take or took for personal reasons only (Compl. ¶¶ 32–33);
- 5) By submitting false invoices for golf cart rentals and admission booklets to the Illinois State Fair that were used by Thornley's family and friends (Compl. ¶ 35); and
- 6) By submitting a fraudulent workers' compensation claim in which she alleged a fabricated sexual assault allegation against her boss and misidentified her employer as the Governor's Office (Compl. ¶¶ 42, 27).

Prior to the filing of the complaint, the Merit Board terminated Thornley in July 2020 for the fraud alleged in the complaint. (Compl. ¶ 8; Relator's Disclosure Ltr. at 2, Ex. 27) According to the complaint, concerns about Thornley's timekeeping initially arose in late 2019. (Compl. ¶¶ 3, 51.) At that time, the Merit Board's then-Executive Director, Jack Garcia, initiated an investigation into Thornley's timekeeping. (Compl. ¶ 3.) Garcia, the Relator's supervisor, directed the Relator to assist with that investigation. (Compl. ¶¶ 3, 51.)

According to the complaint, on January 10, 2020, Garcia notified the Office of the Executive Inspector General ("OEIG") that Thornley was engaged in potential misconduct regarding her timekeeping. (Compl. ¶¶ 38–39.) Garcia subsequently made a formal complaint to the OEIG on January 22, 2020, and provided documents in support of his complaint at that time. (Relator's Disclosure Ltr. at 5, Ex. 10.) Among other things, Garcia's complaint to the OEIG alleged that Thornley had submitted fraudulent overtime requests and forged Garcia's signature on the paperwork purportedly approving those requests. (Relator's Disclosure Ltr., Ex. 10, Jan. 24, 2020 Illinois State Police Investigative Report.)

Subsequent to Garcia's January 22, 2020 complaint to the OEIG, Thornley accused Garcia of sexual assault. (Compl. ¶ 42; Relator's Disclosure Ltr. at 5.) On January 31, 2020, Thornley initiated a worker's compensation claim in which she reported that Garcia had groped her breast at the Merit Board's Springfield office on January 23, 2020. (Relator's Disclosure Ltr., Ex. 15.) The next day, February 1, 2020, Thornley detailed the assault accusation in an interview with attorneys from the Governor's Office, including the Governor's General Counsel. (Relator's Disclosure Ltr., Ex. 12, McGuireWoods Report, at 42.)

After learning of the assault allegation, the Governor's General Counsel recommended to the Merit Board that Garcia be placed on administrative leave, and that the Merit Board hire an

outside law firm, McGuireWoods LLP, to conduct an investigation of both the assault allegation against Garcia and the timekeeping misconduct allegations against Thornley. (Compl. ¶¶ 3, 42, 49.) The Merit Board implemented both recommendations.

Between February 2020 and July 2020, McGuireWoods conducted dozens of interviews regarding both sets of allegations against Garcia and Thornley, respectively. (Relator's Disclosure Ltr., Ex. 12, McGuireWoods Report, at 1.) In conducting its investigation, McGuireWoods looked into every instance of alleged timekeeping fraud by Thornley in 2019. The firm also investigated Thornley's alleged resume fraud. On July 19, 2020, McGuireWoods sent its 94-page final report to the Merit Board. That report reached two conclusions: (1) that there was sufficient evidence to support the fact that Thornley caused payments to herself for overtime she did not work; and (2) there was insufficient evidence to support a finding that Garcia sexually assaulted Thornley. (Relator's Disclosure Ltr., Ex. 12, McGuireWoods Report, at 1.)

Although Thornley had been placed on administrative leave in February 2020, she was terminated from the Merit Board after McGuireWoods completed its investigation in July 2020. (Relator's Disclosure Ltr., Ex. 27, July 21, 2020 Termination Ltr.; Relator's Disclosure Ltr., Ex. 12, McGuireWoods Report, at 12-13.)

On September 23, 2020, after learning that Thornley was temporarily receiving worker's compensation benefits based on her claim regarding the alleged sexual assault, the Relator filed a complaint with the OEIG accusing Thornley of worker's compensation fraud. (Relator's Disclosure Ltr., Exs. 17, 18; Compl. ¶ 54.) On December 15, 2020, the OEIG referred the Relator's complaint back to the Merit Board for "whatever action [the Executive Director] deem[s] appropriate." (Relator's Disclosure Ltr., Ex. 18.)

The Relator filed this action under seal on April 9, 2021. After being served with the complaint and the Relator's disclosures pursuant to 740 ILCS 175/4(b)(2), the Attorney General's Office, on behalf of the State, conducted an investigation and review of the Relator's IFCA claims. While that investigation was ongoing, on September 22, 2021, the State, acting through the State Appellate Prosecutor's Office, obtained a seven-count criminal indictment against Thornley accusing her of forgery, theft, and official misconduct based on her alleged timekeeping fraud during her employment with the Merit Board. The criminal indictment against Thornley remains pending.

On December 7, 2021, the State, acting through the Attorney General's Office, filed the present motion to dismiss pursuant to the State's authority under 740 ILCS 175/4(c)(2)(A). The motion has been fully briefed and the Court held a hearing on the motion on February 15, 2022.

LEGAL STANDARD

The IFCA gives the State broad discretion to dismiss false claims cases. *Scachitti v. UBS Financial Services*, 215 Ill. 2d 484, 512 (2005). This is true even if the relator objects to the dismissal. *Id.* ("Most critically, the Attorney General has authority to dismiss or settle the action at any time, despite the objections of the *qui tam* plaintiff."). The Appellate Court has confirmed that "it is the state's prerogative to decide which case to pursue, not the court's." *State ex rel. Schad, Diamond & Shedden, P.C. v. QVC, Inc.*, 2015 IL App (1st) 132999, ¶ 21 (quoting *State ex rel. Beeler, Schad & Diamond, P.C. v. Burlington Coat Factory Warehouse Corp.*, 369 Ill. App. 3d 507, 517 (1st Dist. 2006)). If the State exercises its prerogative to dismiss the action, the relator must be "notified by the State of the filing of the motion" and afforded "an opportunity for a hearing on the motion" before the court. 740 ILCS 175/4(c)(2)(A). Illinois courts are not permitted to second-guess the State's decision to dismiss, *QVC, Inc.*, 2015 IL App (1st) 132999, ¶ 14, but

rather must presume that the State is acting in good faith. 740 ILCS 175/4(c)(2)(A); *Burlington Coat Factory Warehouse Corp.*, 369 Ill. App. 3d at 517.

The only exception to the State's broad discretion to dismiss a false claims case is if there is "glaring evidence of fraud or bad faith" by the State in seeking dismissal. *Burlington Coat Factory*, 369 Ill. App. 3d at 517.

ANALYSIS

The State has moved to dismiss the Relator's complaint based on its broad discretion under the IFCA to oversee the claims brought in the State's name under that statute. *Scachitti*, 215 Ill. 2d at 512. When presented with such a motion, the Court's role is not to "second guess the State's decision to dismiss by conducting an inquiry into the State's motivations." *Burlington Coat Factory Warehouse Corp.*, 369 Ill. App. 3d at 517. The only requirements prior to dismissal are that the Relator be "notified by the State of the filing of the motion [to dismiss]" and be provided with "an opportunity for a hearing on the motion." 740 ILCS 175/4(c)(2)(A). In this case, the Court finds that these two requirements have been satisfied. The State notified the Relator of its motion to dismiss filing on December 7, 2021, and the Court conducted a hearing on the motion on February 15, 2022.

The Relator objects to dismissal, but the IFCA is clear that the State may obtain dismissal over a relator's objection. *Id.* The Relator has also not identified the type of "glaring evidence of fraud or bad faith" required for the Court to override the State's broad prosecutorial discretion over IFCA claims. *Burlington Coat Factory*, 369 Ill. App. 3d at 517.

The Relator's response to the State's motion to dismiss cites allegations about purported "complicity" by the Governor's Office in Thornley's alleged fraud, specifically, her temporary receipt of worker's compensation benefits during and for a period after the McGuireWoods investigation. (Resp. at 1–2; Compl. ¶¶ 46–48.) The Relator alleges that Thornley's claimed

personal connections to the Governor and the Governor's wife led to special handling of Thornley's worker's compensation claim, which, in Relator's view, was based on a fabricated sexual assault allegation. (Compl. ¶¶ 2–4, 46–48.) The Relator claims that she has raised “disturbing evidence of State complicity in [Thornley's] conduct at the highest levels of State government, supporting the conclusion that the State's motion is not, in fact, in good faith.” (Resp. at 13.)

The Relator's allegations of “complicity” are not sufficient to override the presumption of good faith that the Court must afford to the State's decision to seek dismissal. *Burlington Coat Factory Warehouse Corp.*, 369 Ill. App. 3d at 517. As an initial matter, the Relator's allegations relate exclusively to the Governor's Office and purported intervention regarding Thornley's worker's compensation claim. None of these allegations speak to the decision by the Attorney General's Office, as counsel for the State, to seek dismissal of the Relator's IFCA claims.

At most, the Relator has offered mere speculation that the Attorney General's Office is “succumbing to political pressure” to seek dismissal of this case. (Resp. at 10.) The Illinois Appellate Court has held, however, that “glaring evidence,” not mere speculation, is necessary for a court to override the State's decision to seek dismissal of IFCA claims. *Burlington Coat Factory Warehouse Corp.*, 369 Ill. App. 3d at 517. The Relator in this case has not produced evidence that the Governor's Office even knows about the Relator's complaint at this point. As required by the IFCA, the complaint was filed under seal and disclosed to the Court and the Attorney General's Office. 740 ILCS 175/4(b)(2). The Court cannot infer without evidence that the Attorney General's Office is “succumbing to political pressure” from the Governor's Office to dismiss a case that the Governor's Office may not even be aware of at this point. (Resp. at 10.)

The Attorney General's Office has also identified multiple credible reasons why it seeks dismissal in this case. Specifically, the Attorney General's Office has identified multiple points at which the State learned of the allegations against Thornley prior to the filing of the Relator's complaint. The complaint itself acknowledges that Thornley was investigated for timekeeping misconduct by a law firm retained by the Merit Board and terminated based on the law firm's findings in July 2020—ten months prior to the filing of Relator's complaint. (Compl. ¶¶ 30–31.) The State's prior knowledge of the allegations against Thornley means that the complaint is potentially subject to the public disclosure bar under the IFCA. 740 ILCS 175/4(e)(4)(A).

The Relator has countered that she is an “original source” of the allegations against Thornley because of the Relator's role in assisting the Merit Board's Executive Director, Jack Garcia, uncover some of the initial evidence regarding Thornley's alleged overtime fraud. (Compl. ¶ 50.) The Court does not need to resolve, however, whether the Relator is in fact an “original source” within the meaning of the IFCA. The State need not definitively establish that an IFCA complaint is legally defective in order to exercise its prosecutorial discretion to dismiss. The State is not in the position of a defendant seeking to defeat a plaintiff's claim; the State is the plaintiff in an IFCA case, 740 ILCS 175/4(b)(1), and can decide for itself whether to pursue the claims brought in its name, *id.* § (c)(2)(A). While not a prerequisite for dismissal, the fact that the State has raised a fair question about a potential legal defect in the complaint tends to undercut the Relator's contention that the State is acting fraudulently or in bad faith in seeking dismissal.

In addition to the public disclosure bar, the State has also pointed out that Thornley's worker's compensation claim is the subject of an ongoing administrative proceeding in which the State is a party: *Thornley v. State*, Case No. 20WC025256. That proceeding, which began in October 2020, predates the filing of the complaint. The State has asserted that the Relator's

allegations regarding Thornley's worker's compensation claim are precluded by the IFCA's government action bar because those allegations are "the subject of a civil suit or an administrative money penalty proceeding in which the State is already a party." 740 ILCS 175/4(e)(3). At the hearing on the State's motion, the Relator noted that Thornley herself initiated the administrative proceeding after her termination from the Merit Board. It is not clear, however, that this fact alters the applicability of 740 ILCS 175/4(e)(3), which refers to the State being a "party" without any requirement that the State be the plaintiff or the initiating party in the administrative proceeding. Here again, the Court need not resolve whether the government action bar applies to the Relator's claims. The relevant point is that the State's identification of a credible potential defect with the complaint undercuts the Relator's ability to show "glaring evidence of fraud or bad faith." *Burlington Coat Factory Warehouse Corp.*, 369 Ill. App. 3d at 517.

In addition to potential legal defects with the Relator's complaint, the State has also identified additional reasons why it is seeking dismissal. The State notes that the allegations in the complaint overlap significantly with the seven-count criminal indictment against Thornley currently pending before this Court in *State v. Thornley*, Case No. 2021-CF-811. The State points out that if convicted, Thornley could be required to pay restitution to the State for her alleged overtime and travel and expense reimbursement fraud. *See* 730 ILCS 5/5-5-6(f). The State contends that the potential availability of restitution against Thornley in her criminal case makes the Relator's IFCA claims duplicative and unnecessary to make the State whole. The Relator responds that the existence of a parallel criminal case does not preclude civil claims under the IFCA. While that may be true, it is well within the State's prosecutorial discretion under the IFCA to decide that an IFCA civil action on top of a criminal action against the same defendant for the same underlying conduct is duplicative and an inefficient use of the State's resources.

The State has also identified recent debt collection actions naming Thornley that, in the State's view, raise concerns about whether any monetary judgment obtained through this IFCA action would ultimately be collectable. The inability to collect a judgment is also a legitimate factor for the State to weigh in the exercise of its prosecutorial discretion. Given that Thornley has been terminated from her job, indicted, and faces debt collection proceedings, it is not an unreasonable exercise of prosecutorial discretion to decide against protracted IFCA litigation in these circumstances.

The State has also expressed concern about inviting IFCA litigation any time a State employee is caught lying about their timekeeping or work expenses. The State points out that other enforcement mechanisms exist to punish this type of misconduct—termination, criminal prosecution, investigations and proceedings under the State Officials and Employees Ethics Act, 5 ILCS 430/20-50—and that the State prefers to focus its limited IFCA enforcement resources on high-value cases. The setting of enforcement priorities and the allocation of resources in accordance with those priorities is core to the prosecutorial discretion vested in the executive branch. The Relator may disagree with those enforcement priorities or how they apply to this case, but it is not the Court's role to intrude on the State's prosecutorial discretion.

Lastly, the Relator urges the Court to apply a subset of federal cases considering the federal False Claims Act that infer a substantive due process limitation on the government's ability to dismiss claims under the False Claims Act. The Court notes that Relator has not identified any cases from Illinois courts applying this analysis to the IFCA. Regardless, the Court need not decide whether there is a substantive due process limitation, grounded in the U.S. Constitution, on the State's ability to dismiss an IFCA claim. Even if the Court applied this substantive due process analysis in the present case, the result would not change. The bar for establishing a substantive due

process violation based on a discretionary executive action is extremely high. According to the U.S. Court of Appeals for the Seventh Circuit, the executive action must “shock the conscience,” “offend even hardened sensibilities,” or come “too close to the rack and the screw to permit of constitutional differentiation.” *United States ex rel. CIMZNHCA, LLC v. UCB, Inc.*, 970 F.3d 835, 852 (7th Cir. 2020) (quoting *County of Sacramento v. Lewis*, 523 U.S. 883, 846 (1998); *Rochin v. California*, 342 U.S. 165, 172 (1952)). The State’s decision to seek dismissal in this case does not approach this high standard.

CONCLUSION

The IFCA affords the State substantial prosecutorial discretion over what claims may be brought in the State’s name. The State has exercised its discretion to seek dismissal of this case. The Relator objects to the State’s dismissal request, but the IFCA permits dismissal at the State’s request over the Relator’s objection. The Relator has not offered the “glaring evidence of fraud or bad faith” required for this Court to override the State’s prosecutorial discretion. *Burlington Coat Factory*, 369 Ill. App. 3d at 517. The Court grants the State’s motion to dismiss the complaint pursuant to 740 ILCS 175/4(c)(2)(A).

Accordingly, IT IS HEREBY ORDERED:

- (1) the State’s Motion to Dismiss is granted;
- (2) Relator’s Complaint is dismissed with prejudice;
- (3) the State is granted 14 days, from the date this Order is entered, to (a) file redacted copies of any exhibits or documents containing personal identity information in compliance with Illinois Supreme Court Rule 138 and (b) submit a list of all documents in the Court file that can be unsealed and made public to the Sangamon County Circuit Clerk; and
- (4) the Sangamon County Circuit Clerk is directed to unseal and make public the documents identified by the State in 3(b).

ENTERED: MARCH 7, 2022



Circuit Judge Adam Giganti
Circuit Court of Sangamon County

EXHIBIT

B

FILED

IN THE CIRCUIT COURT FOR THE SEVENTH JUDICIAL CIRCUIT
SANGAMON COUNTY, ILLINOIS

JUL 08 2022

38

Clerk of the
Circuit Court

PEOPLE OF THE STATE OF
ILLINOIS ex rel., EMILY FOX,

Plaintiff,

v.

JENNY THORNLEY,

Defendant.

Case No: 2021-L 53

ORDER

The court orders the entire court file be unsealed. Furthermore, pursuant to the April 11, 2022

Order, all agreed-upon redacted exhibits shall be substituted for those that had previously been filed
under seal.

DATED: July 8, 2022

Enter

Adam Giganti, Circuit Court Judge