

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

Suppressed,)	
)	
Plaintiffs,)	Case No. 2021 L 000053
)	
v.)	Hon. Adam Giganti
)	
Suppressed,)	Filed <i>In Camera</i> and Under Seal
)	Pursuant to 740 ILCS § 175/4
)	
Defendant.)	

**THE STATE OF ILLINOIS’
MOTION TO DISMISS RELATOR’S COMPLAINT**

Eileen E. Boyle Perich, ARDC No. [REDACTED]
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**IN THE CIRCUIT COURT FOR THE SEVENTH JUDICIAL CIRCUIT
SANGAMON COUNTY, ILLINOIS**

PEOPLE OF THE STATE OF)	
ILLINOIS <i>ex rel.</i>, EMILY FOX,)	
)	
Plaintiff,)	Case No. 2021 L 000053
)	
v.)	Hon. Adam Giganti
)	
JENNY THORNLEY,)	Filed <i>In Camera</i> and Under Seal
)	Pursuant to 740 ILCS § 175/4
)	
Defendant.)	

NOTICE OF MOTION

To: Robert M. Andalman
A&G Law, LLC
542 S. Dearborn Street, 10th Floor
Chicago, IL 60605

Please take notice that on December 14, 2021 at 9:30 a.m. on behalf of the State of Illinois, I shall appear before Judge Adam Giganti, or any Judge sitting in his stead, by Zoom videoconference and present the State of Illinois' Motion to Dismiss Relator's Complaint, a true and correct copy of which is attached and hereby served upon you.

The Zoom video call information is:

Zoom link:

<https://us04web.zoom.us/j/71173388165?pwd=eWU0Si8yd0lZdFpIZURUdllDcnJzUT09>

Meeting ID: 711 7338 8165

Passcode: BWww3T

Dated: December 7, 2021

Respectfully submitted,

KWAME RAOUL
Attorney General of the State of Illinois

CERTIFICATE OF SERVICE

I, the undersigned, an attorney, hereby certify that I caused to be served upon those listed above copies of the attached Notice of Motion and the State of Illinois' Motion to Dismiss Relator's Complaint via electronic mail on this 7th day of December 2021 before 5:00 p.m.

BY: /s/ Eileen E. Boyle Perich
Eileen E. Boyle Perich
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**THE STATE OF ILLINOIS’
MOTION TO DISMISS RELATOR’S COMPLAINT**

The State of Illinois (“State”) respectfully moves to dismiss the Complaint filed by Relator Emily Fox pursuant to the State’s prosecutorial discretion under the Illinois False Claims Act, 740 ILCS 175/4(c)(2)(A). The State determined through its investigation that this action is legally deficient.

1. On April 9, 2021, Relator filed this suit on behalf of the State of Illinois pursuant to the *qui tam* provisions of the Illinois False Claims Act (“IFCA”), 740 ILCS 175/4.

2. Relator’s Complaint alleges that the Defendant Jenny Thornley (“Thornley”) defrauded the State between 2014 and 2020 when she was employed by the Illinois State Police Merit Board (“ISP Merit Board”). Relator, who has been an employee of the ISP Merit Board at all relevant times and now serves as its Executive Director, alleges that Thornley made false timekeeping records and statements to procure benefits and induce payments to her from the State; falsified data in the State’s payroll system; and submitted false travel and reimbursement vouchers. Relator alleges that this conduct violated the Illinois False Claims Act, 740 ILCS 175/1, *et seq.*

3. The State now moves to dismiss Relator's Complaint pursuant to the State's prosecutorial discretion under the Illinois False Claims Act, 740 ILCS 175/4(c)(2)(A), because the State has determined through its investigation that this action is legally deficient and, as such, the costs to the State and the judicial system of litigating this matter outweigh any benefits of permitting this action to proceed.

4. The Illinois Supreme Court has confirmed that the Illinois False Claims Act gives the State broad discretion to dismiss false claims cases. *Scachitti v. UBS Financial Services*, 215 Ill. 2d 484, 512 (2005) ("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 likewise 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)).

5. A court should grant the State's motion to dismiss a false claims case unless extraordinary circumstances exist such as "glaring evidence of fraud or bad faith by the state." *Burlington Coat Factory*, 369 Ill. App. 3d at 517; *see also Hoyte v. American Nat'l Red Cross*, 518 F.3d 61, 65 (D.C. Cir. 2008) (holding that courts review motions to dismiss under the Federal False Claims Act only for "fraud on the court"). Even a relator's right to a hearing on the government's dismissal is simply a formal opportunity for the relator to convince the government not to end the case, rather than an inquiry into the merits. *Burlington Coat Factory*, 369 Ill. App. 3d at 517. *Accord Swift v. United States*, 318 F.3d 250, 253 (D.C. Cir. 2003) (finding the government has an "unfettered right" to dismiss a false claim case); *United States ex rel. Cimznhca, LLC v. UCB, Inc.*, 970 F.3d 835, 849-52 (7th Cir. 2020) (reversing the district court's denial of the

government's motion to dismiss because the court reviewed the motion under an arbitrary and capricious standard).

6. The State moves to dismiss Relator's Complaint based on an exercise of the State's discretion to do so. After reviewing the voluminous pre-filing disclosures, obtaining additional information from the Relator, analyzing ongoing lawsuits related to the facts of the Complaint, and discussing the matter with the Office of the Executive Inspector General, the State finds that the Complaint suffers from significant legal and factual defects that do not justify continued expenditure of the State's litigation resources on this matter. Consequently, the State elects to exercise its prosecutorial discretion under 740 ILCS 175/4(c)(2)(A) to dismiss this action. A proposed order is attached as Exhibit A for the convenience of the Court.

WHEREFORE, the State of Illinois respectfully moves this Honorable Court for entry of an Order dismissing Relator's Complaint with prejudice.

Dated: December 7, 2021

Respectfully submitted,

KWAME RAOUL
Attorney General of the State of Illinois

BY: /s/ Eileen E. Boyle Perich
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EXHIBIT A

**IN THE CIRCUIT COURT FOR THE SEVENTH JUDICIAL CIRCUIT
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ORDER

This cause coming to be heard on December 14, 2021, on the State of Illinois' Motion to Dismiss Relator's Complaint pursuant to 740 ILCS 175/4(c)(2)(A), all parties having received their due notice, and the Court being fully advised in the premises,

IT IS HEREBY ORDERED:

- 1) The State of Illinois' Motion to Dismiss Relator's Complaint is GRANTED;
- 2) Relator's Complaint is hereby dismissed; and
- 3) The court file is hereby unsealed.

Dated: _____, 2021

ENTERED:

Judge

Prepared by:
Eileen E. Boyle Perich, ARDC No. [REDACTED]
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