

1 FOR PUBLICATION

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9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11 SOUTHERN DIVISION

12 UNITED STATES ex rel. CHARLES) Case No. SA CV 00-1216-GLT [ES]
13 ANTHONY et al.,)
14 Plaintiffs,) ORDER ON SUBJECT MATTER
15 vs.) JURISDICTION
16 BURKE ENGINEERING COMPANY) (31 U.S.C. § 3732(b))
17 et al.,)
18 Defendants.)

19 The Court holds, on apparent first impression, "the same
20 transaction or occurrence" jurisdiction requirement of the federal False
21 Claims Act (31 U.S.C. § 3732(b)) is broad enough to include a system or
22 scheme of false claims.

23 I. BACKGROUND

24 Plaintiff is a former employee of Defendant Burke Engineering Co.,
25 a California corporation that sells heating, air conditioning, and
26 refrigeration controls to government entities and other purchasers.
27 Plaintiff contends since 1993 Burke Engineering has sold various items
28 to government employees for their personal use, but has improperly

1 claimed payment for the items from government entities. After Burke
2 Engineering fired Plaintiff, he brought this lawsuit for damages and
3 civil penalties under the federal and California False Claims Acts and
4 the Nevada equivalent ("the Acts").

5 Plaintiff alleges three counts of substantive violations of the
6 Acts (31 U.S.C. § 3729, Cal. Gov't Code § 12651, Nev. Rev. Stat.
7 357.040) and three counts of conspiracy to violate the Acts (31 U.S.C. §
8 3729(a)(3), Cal. Gov't Code § 12651(a)(3), Nev. Rev. Stat. 357.040(c)).
9 Plaintiff also brings three counts of employment discrimination under
10 the Acts (31 U.S.C. § 3730(h), Cal. Gov't Code § 12653, Nev. Rev. Stat.
11 357.240.2), alleging harassment and termination due to his lawful
12 conduct in furtherance of an action under the Acts.

13 Plaintiff sues for himself as "relator" under the Acts and for
14 several government entities, which declined to intervene in the action.

15 Defendants move to dismiss the California and Nevada state causes
16 of action for lack of subject matter jurisdiction.

17 II. DISCUSSION

18 The plaintiff, as the party seeking to invoke the jurisdiction of
19 the federal court, bears the burden of establishing subject matter
20 jurisdiction. Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375,
21 377 (1994); Haqood v. Sonoma County Water Agency, 81 F.3d 1465, 1472
22 (9th Cir. 1996).

23 Section 3732(b) of the federal False Claims Act confers
24 jurisdiction in this Court "over any action brought under the laws of
25 any State for the recovery of funds paid by a State or local government
26 if the action arises from the same transaction or occurrence" as an
27 action brought under the federal Act. 31 U.S.C. § 3732(b) (2000).

28 Defendants argue this Court does not have subject matter

1 jurisdiction over the state claims because discovery shows no single
2 transaction or occurrence involved both the federal government and a
3 California or Nevada state entity. Plaintiff concedes "there is an
4 overwhelming likelihood that no singular false claim transaction
5 involved payment by both federal and state entities." Plaintiff
6 contends the phrase "the same transaction or occurrence" in § 3732(b) is
7 not limited to a single event, but would include a system or scheme of
8 false claims. The issue before the Court is whether an alleged system
9 or scheme of making false claims to both federal and state entities can
10 be considered "the same transaction or occurrence" for jurisdiction
11 purposes under 31 U.S.C. § 3732(b). The Court concludes it can.

12 No party has cited, and the Court has not found, case law
13 interpreting the phrase "transaction or occurrence" under § 3732(b).
14 However, consideration of the construction of similar language on other
15 topics is helpful in deciding the better construction here.

16 Federal Rule of Civil Procedure ("FRCP") 20(a), on permissive
17 joinder of parties, contains the phrase "transaction, occurrence, or
18 series of transactions or occurrences." It is arguable a "transaction"
19 or "occurrence" should be construed as a single event because it was
20 necessary to add "or series of transactions or occurrences" to permit
21 broader application to a series of events. However, this argument is
22 not convincing: if a "transaction" or "occurrence" includes a system or
23 scheme, then the additional language in Rule 20 would refer to a series
24 of systems or schemes.

25 Plaintiff's contention that Defendants had a company policy of
26 administering false claims would probably be the same transaction under
27 Rule 20. "[A]llegations of a system of decision-making, or widely-held
28 policy of discrimination, constitute a single transaction for Rule 20(a)

1 purposes" Hawkins v. Groot Indus., Inc., 210 F.R.D. 226, 230
2 (N.D. Ill. 2002) (emphasis added) (internal quotation and citation
3 omitted). See also Coughlin v. Rogers, 130 F.3d 1348, 1350 (9th Cir.
4 1997) (stating a "systematic pattern of events" such as a "pattern or
5 policy of delay" in considering immigration applications would be "the
6 same transaction or occurrence" under FRCP 20(a)); cf. Mosley v. Gen.
7 Motors Corp., 497 F.2d 1330, 1333-34 (8th Cir. 1974) (holding a company-
8 wide policy designed to discriminate on the basis of race was a series
9 of transactions or occurrences under FRCP 20(a)). But see Brown v.
10 Worthington Steel, 211 F.R.D. 320, 325 (S.D. Ohio 2002) (finding an
11 alleged policy of race discrimination was not a transaction or
12 occurrence under FRCP 20(a) because the individuals did not work at the
13 company during "the same time frame, in the same department, at the same
14 job position, or under the same supervisor").^{1/}

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16 ^{1/}Cases cited by Defendants are distinguishable. In In re
17 Connors, which interpreted FRCP 20(a), several plaintiff credit
18 card companies attempted to join in an action against one
19 defendant. 125 B.R. 611, 612 (Bankr. S.D. Cal. 1991). The court
20 found plaintiffs' issuance of separate credit cards to defendant
21 through different banks was not the same transaction or
22 occurrence. Id. at 614-15. In this case, however, one Plaintiff
23 alleges the same group of Defendants used one system to defraud
24 government entities. The operative facts underlying the alleged
25 transactions, including the parties, are more logically related
26 than those in In re Connors.

27 In DirectTV v. Loussaert, the Court held several defendants
28 had not engaged in the same transaction or occurrence when they
bought separate devices to intercept DirectTV's satellite
transmission. 218 F.R.D. 639, 642 (D. Iowa 2003). The court
found separate issues of fact for each defendant, such as whether
each defendant intercepted the transmission. Id. at 642-43.
Here, the same group of Defendants allegedly used the same system
to make multiple false claims. There are more overlapping
operative facts than in DirectTV, such as how the single system
worked and how Defendants used it to make allegedly false claims
to government entities. Also unlike DirectTV, here Plaintiff
alleges Defendants had a company policy of making false claims.
DirectTV held the defendants did not have a common purpose because

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1 Another good comparison is provided by FRCP 13(a), on compulsory
2 counterclaims.^{2/} That rule states compulsory counterclaims must be
3 brought if they arise out of the "transaction or occurrence that is the
4 subject matter of the opposing party's claim." Fed. R. Civ. P. 13(a).

5 The phrase "transaction or occurrence" in FRCP 13(a) is broadly
6 construed. "'Transaction' is a word of flexible meaning. It may
7 comprehend a series of many occurrences, depending not so much upon the
8 immediateness of their connection as upon their logical relationship."
9 Moore v. N.Y. Cotton Exch., 270 U.S. 593, 610 (1926); Schulman v.
10 California (In re Lazar), 237 F.3d 967, 979 (9th Cir. 2001) (same).
11 See also Pochiro v. Prudential Ins. Co. of Am., 827 F.2d 1246, 1249
12 (9th Cir. 1987) (noting federal courts use the "logical relationship"
13 test to determine whether two claims arise out of the same "transaction
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16 ^{1/}(...continued)
17 they each acted independently for their own individual purposes.
18 Id.

19 ^{2/}Other courts have adopted the approach of looking to the
20 FRCP 13(a) standard when case law under the statute at issue does
21 not establish the meaning of "transaction or occurrence." See,
22 e.g., State Bd. of Equalization v. Harleston (In re Harleston),
23 331 F.3d 699, 702 (9th Cir. 2003) (applying the logical
24 relationship test of FRCP 13(a) to interpret the phrase
25 "transaction or occurrence" in 11 U.S.C. § 106); Schulman v.
26 California (In re Lazar), 237 F.3d 967, 979 (9th Cir. 2001)
27 (same); Pinkstaff v. United States (In re Pinkstaff), 974 F.2d
28 113, 115 (9th Cir. 1992) (same); In re Oil Spill by Amoco Cadiz,
491 F. Supp. 161, 168 (N.D. Ill. 1979) (looking to cases under
Rule 13(a) to interpret "transaction or occurrence" in 28 U.S.C.
§ 1607(b)); In re Malone, 115 B.R. 252, 254 (Bankr. E.D. Cal.
1990) ("The limited case law addressing [28 U.S.C.] § 2415(f)
does not elucidate on the meaning of the words 'transaction or
occurrence.' . . . However, the similarity between the language
of § 2415(f) and Rule 13(a) suggests that the latter, although
not necessarily controlling resolution of this issue, offers
useful guidance.").

1 or occurrence").^{3/}

2 The logical relationship test considers "whether the essential
3 facts of the various claims are so logically connected that
4 considerations of judicial economy and fairness dictate that all the
5 issues be resolved in one lawsuit.'" Pochiro, 827 F.2d at 1249 (quoting
6 Harris v. Steinem, 571 F.2d 119, 123 (2d Cir. 1978)).

7 Here, there is a logical relationship between each alleged false
8 claim made by Defendants. Plaintiff contends Defendants used the same
9 computerized system to manage the scheme of submitting false claims to
10 both federal and state entities. The same set of operative facts - how
11 Defendants administered the system and who administered it - is the
12 basis for each claim. The essential facts of each claim are logically
13 related. Considerations of judicial economy dictate all allegedly false
14 claims administered through the same system be resolved in one lawsuit.

15 Other authorities, construing "transaction or occurrence" in other
16 contexts, support a liberal construction of the phrase.^{4/}

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18 ^{3/}Other courts have found a series of events can be a single
19 "transaction or occurrence" under FRCP 13(a). See, e.g., In re
20 Malone, 115 B.R. at 254 (holding several student loans made to
21 plaintiff by different lenders was "the same transaction" in the
22 context of debt collection proceedings); In re Century Brass
Prods., Inc., 58 B.R. 838, 845 (Bankr. D. Conn. 1986) (ruling a
series of sales of the same type of product between the parties
during a ten-month period was a "transaction or occurrence" under
FRCP 13(a)).

23 ^{4/}In addition to FRCP 13, Rules 14 and 10 also contain the
24 phrase "transaction or occurrence." Cases interpreting Rule 14
25 have given it a broad construction. See, e.g., Lasa Per L'
Industria Del Marmo Societa Per Azioni v. Alexander, 414 F.2d
26 143, 146 (6th Cir. 1969) ("Rules 13 and 14 are remedial and are
27 construed liberally. Both Rules 13 and 14 are 'intended to avoid
28 circuitry of action and to dispose of the entire subject matter
arising from one set of facts in one action, thus administering
complete and evenhanded justice expeditiously and
economically.'") (quoting Blair v. Cleveland Twist Drill Co., 197

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2 4/ (...continued)
3 F.2d 842, 845 (7th Cir. 1952)); Blais Constr. Co. v. Hanover
4 Square Assocs.-I, 733 F. Supp. 149, 152 (N.D.N.Y. 1990) (likening
5 the term "transaction" in FRCP 14 to the "'same general set of
6 facts'" or the "'same core of facts'") (quoting United States v.
7 Joe Grasso & Son, Inc., 380 F.2d 749, 751-52 (5th Cir. 1967));
8 cf. Galt G/S v. Hapaq-Lloyd AG, 60 F.3d 1370, 1374-75 (9th Cir.
9 1995) (finding two acts committed by two separate actors at
10 different times were not the same "transaction or occurrence"
11 under FRCP 14); Stewart v. Am. Int'l Oil & Gas Co., 845 F.2d 196,
12 200 (9th Cir. 1988) (ruling two separate parties' sales of the
13 same item were not the same transaction because the "basic facts"
14 underlying each sale were different).

15 A Ninth Circuit case considered the reach of the
16 "transaction or occurrence" test in relation to Rule 10's
17 pleading requirements. Bautista v. Los Angeles County, 216 F.3d
18 837, 840-41 (9th Cir. 2000) (stating fifty-one plaintiffs who
19 sought individual relief based on different types of
20 discrimination had pleaded different transactions or occurrences
21 and should have divided them into separate counts under FRCP
22 10(b)). But see id. at 842-43 (Reinhardt, J., concurring)
23 (asserting the majority's statements on Rule 10 were dicta, and
24 the standard for finding a "transaction or occurrence" is whether
25 there is a logical relationship, a similarity of factual
26 background, or a "'systematic pattern of events'") (quoting
27 Coughlin v. Rogers, 130 F.3d 1348, 1350 (9th Cir. 1997)).

28 Courts have broadly construed "transaction or occurrence"
when the phrase appears in federal statutes. See, e.g., In re
Oil Spill by Amoco Cadiz, 491 F. Supp. at 168 (considering the
logical relationship, similarity between issues of fact and law,
and similarity of evidence needed to prove each claim when
interpreting "transaction or occurrence" in 28 U.S.C. § 1607(b));
Sea-Land Serv., Inc. v. United States, 493 F.2d 1357, 1371 (Ct.
Cl. 1974) (applying the logical relationship test to the phrase
"transaction or occurrence" in 28 U.S.C. § 2415(f) and concluding
two separate contracts were a single transaction because they
involved the same objects, were executed on the same day, and
incorporated each other by reference).

FRCP 15(c) contains language similar, but not identical, to
that in 31 U.S.C. § 3732(b). Rule 15(c) states an amended
pleading relates back to the date of the original pleading when
the claim arises from the "conduct, transaction, or occurrence"
set forth in the original pleading. Courts have construed this
language broadly. See, e.g., Markus v. Gschwend (In Re Markus),
313 F.3d 1146, 1150-51 (9th Cir. 2002) (stating the test is met
"when the claim to be added will likely be proved by the same
kind of evidence offered in support of the original pleadings" or
by a "common evidentiary base") (emphasis added) (internal
quotations omitted); Martell v. Trilogy Ltd., 872 F.2d 322, 325

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3 III. DISPOSITION

4 "The same transaction or occurrence" jurisdiction requirement of
5 31 U.S.C. § 3732(b) is broad enough to include a system or scheme of
6 false claims.

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8 4/ (...continued)
9 (9th Cir. 1989) (holding the test under FRCP 15(c) is "whether
10 the original and amended pleadings share a common core of
11 operative facts so that the adverse party has fair notice of the
12 transaction, occurrence, or conduct called into question")
13 (emphasis added); New Bedford Capacitor, Inc. v. Sexton Can Co.
14 (In re New Bedford Capacitor, Inc.), 301 B.R. 375, 378-80 (Bankr.
15 D. Mass. 2003) (noting "'an underlying common scheme or course of
16 conduct which is the basis of the original action and links
17 otherwise distinct transactions'" meets the conduct, transaction,
18 or occurrence test of FRCP 15(c)) (emphasis added) (quoting Coan
19 v. O & G Indus., Inc. (In re Austin Driveway Servs., Inc.), 179
20 B.R. 390, 397 (Bankr. D. Conn. 1995)).

21 Several courts have broadly construed "transaction or
22 occurrence" when it does not appear in a statute or FRCP. See,
23 e.g., Sims v. United States Dep't of Health & Human Servs. (In re
24 TLC Hosps., Inc.), 224 F.3d 1008, 1012-13 (9th Cir. 2000)
25 (holding a continuous system of payments and adjustments in
26 different years by the Department of Health and Human Services
27 under the Medicare system was, under the logical relationship
28 test, "the same transaction" in a bankruptcy recoupment
proceeding); Clark v. Taylor, 163 F.2d 940, 942-43 (2d Cir. 1947)
(stating a "transaction" or "occurrence" is the "subject matter
of a claim," the "central core of fact," or the "substantial
identity" of the claim); Arnold v. Bache & Co., 377 F. Supp. 66,
67-68 (M.D. Pa. 1973) (finding, with respect to FRCP 54,
systematic stealing and embezzling from plaintiffs and other
members of plaintiffs' class was "a single transaction or
occurrence" and arose from "a single aggregate of operative
facts") (internal quotation omitted). But see FDIC v. F.S.S.S.,
829 F. Supp. 317, 322 (D. Alaska 1993) (ruling three promissory
notes between the same parties were not the same transaction or
occurrence when they were created approximately ten years apart).

Additional federal statutes and regulations contain the
phrase "transaction or occurrence" or similar language, but the
cases do not shed light on the meaning of the phrase. See, e.g.,
28 U.S.C. § 1330(c) (1993); 28 U.S.C. § 1368 (West Supp. 2004);
28 U.S.C. § 3012 (1994); 29 U.S.C. § 1854(f) (1999); 12 C.F.R. §
263.22(a) (2004).

1 Defendants' motion to dismiss for lack of subject matter
2 jurisdiction is DENIED.

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4 DATED: February _____, 2005.

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7 GARY L. TAYLOR
8 UNITED STATES DISTRICT JUDGE
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