

**UNITED STATES of America, EX REL. Chickoiyah MILLER, ex  
rel. Cathy Sillman, Plaintiff  
Chickoiyah Miller; Cathy Sillman, Relators-Appellants  
v.  
WESTON EDUCATIONAL, INC., doing business as Heritage  
College, Defendant-Appellee.**

[No. 14-1760.](#)

**United States Court of Appeals, Eighth Circuit.**

Submitted: July 29, 2016.

Filed: October 19, 2016.

Chickoiyah Yehnee Miller and Cathy Lynn Sillman filed a qui tam False Claims suit against Heritage College, alleging it fraudulently induced the Department of Education (DOE) to provide funds by falsely promising to keep accurate student records. Each relator also alleged retaliation under the FCA and wrongful discharge under state law. The district court granted summary judgment to Heritage. Relators appealed, except on Sillman's retaliation claim. The Supreme Court vacated this court's earlier opinion. *Weston Educ., Inc. v. United States ex rel. Miller*, \_\_\_ U.S. \_\_\_, 136 S.Ct. 2505, 195 L.Ed.2d 836 (2016), *vacating [United States ex rel. Miller v. Weston Educ., Inc.](#), 784 F.3d 1198 (8th Cir. 2015)*. Having jurisdiction under 28 U.S.C. § 1291, this court reverses and remands the FCA claim, and affirms the employment claims.

499 Relators, both former Heritage employees, claim that Heritage altered grade and attendance records from 2006 to 2012 to ensure students made SP and to avoid refunds, thereby maximizing Title IV funds. Miller saw an administrator increase student grades without instructor knowledge or consent, erasing the grades \*499 in a paper grade book and replacing them. She identifies a number of her own students — from before and after the signing of the PPA — whose transcripts reflect higher grades than she awarded. She saw administrators alter attendance records to mark absent students as present. At meetings in 2009 and 2010, Miller heard administrators discuss keeping students at Heritage long enough to get all Title IV funds possible. Two other program managers testified that administrators ordered them to go through instructor grade books and change failing grades to passing. Other Heritage employees and instructors witnessed or participated in altering grade and attendance records, before and after the signing of the PPA. For the purpose of summary judgment, Heritage does not dispute it altered records.

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The FCA makes liable anyone who "knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim." 31 U.S.C. § 3729(a)(1)(B). Under fraudulent inducement, FCA liability attaches to "each claim submitted to the government under a contract so long as the original contract was obtained through false statements or fraudulent conduct." *In re Baycol Prods. Litig.*, 732 F.3d 869, 876 (8th Cir. 2013), citing *United States ex rel. Marcus v. Hess*, 317 U.S. 537, 543-44, 552, 63 S.Ct. 379, 87 L.Ed. 443 (1943) (finding contractors liable under FCA for all claims submitted under government contract obtained by collusive bidding). Accord *United States v. United Techs. Corp.*, 626 F.3d 313, 320 (6th Cir. 2011) ("False statements underlying multi-year contracts generate a stream of related invoices and cause the government to pay all of the invoices related to the contract."); *United States ex rel. Longhi v. United States*, 575 F.3d 458, 468 (5th Cir. 2009) ("[A]lthough the Defendants' subsequent claims for payment made under the contract were not literally false, [because] they derived from the original fraudulent misrepresentation, they, too, became actionable false claims." (second alteration in original) (internal quotation marks omitted)); *United States ex rel. Hendow v. Univ. of Phoenix*, 461 F.3d 1166, 1173 (9th Cir. 2006) ("[L]iability will attach to each claim submitted to the government under a contract, when the contract... was originally obtained through false statements or fraudulent conduct."); *United States ex rel. Main v. Oakland City Univ.*, 426 F.3d 914, 916 (7th Cir. 2005) ("If a false statement is integral to a causal chain leading to payment, it is irrelevant how the federal bureaucracy has apportioned the statements among layers of paperwork."); *Harrison v. Westinghouse Savannah River Co.*, 176 F.3d 776, 788 (4th Cir. 1999) (stating "any time a false statement is made in a transaction involving a call on the U.S. fisc, False Claims Act liability may attach" even if "the claims that were submitted were not in and of themselves false"). See also *United States v. Neifert-White Co.*, 390 U.S. 228, 232, 88 S.Ct. 959, 19 L.Ed.2d 1061 (1968) (noting FCA "was intended to reach all types of fraud, without qualification, that might result in financial loss to the Government").

Fraudulent inducement requires a plaintiff to show: (1) the defendant made a "false record or statement"; (2) the defendant knew the statement was false; (3) the statement was material; and (4) the defendant made a "claim" for the government to pay money or forfeit money due. See *Baycol*, 732 F.3d at 875-76 ("[A] claim alleging fraud in the inducement of a government contract does focus on the false or fraudulent statements which induced the government to enter into the contract at the outset."); *United States ex rel. Vigil v. Nelnet, Inc.*, 639 F.3d 791, 796, 799 (8th Cir. 2011) (requiring materiality). At issue is whether Heritage made a knowingly false statement, and whether it was material.