UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA et al.,

Plaintiffs,

-v-

LABQ CLINICAL DIAGNOSTICS, LLC et al.,

Defendants.

22-cv-10313 (LJL)
22-cv-00751 (LJL)

OPINION AND ORDER

LEWIS J. LIMAN, United States District Judge:

Defendants LabQ Clinical Diagnostics, LLC ("LabQ"), Community Mobile Testing, Inc. ("CMT"), Dart Medical Laboratory, Inc. ("Dart"), and Moshe Landau ("Landau," collectively "Defendants") move, pursuant to 28 U.S.C. § 3101(d)(2), for an order releasing, or in the alternative modifying and reducing, the writs of attachment and garnishment previously issued by the Court. Dkt. No. 721. For the reasons that follow, the motion is granted but the Court stays the effect of this Order for a period of fourteen days for the Government to make a renewed motion for more limited relief consistent with this opinion.

BACKGROUND

Familiarity with the prior proceedings in this case is assumed. Pursuant to the Coronavirus Aid, Relief and Economic Security Act ("CARES Act"), the Health Resources and Services Administration ("HRSA"), an agency within the Department of Health and Human Services ("HHS"), established and administered a program to reimburse providers who provided COVID-19 testing to individuals without healthcare coverage, formally titled *The COVID-19 Claims Reimbursement to Health Care Providers and Facilities for Testing, Treatment, and Vaccine Administration for the Uninsured Program*, often known as the "Uninsured Program"

(hereafter, the "Uninsured Program" or "UIP"). Dkt. No. 493 (the "AC") ¶ 36. Landau formed LabQ and Dart in 2019 and at that time the businesses primarily operated to provide blood testing diagnostic laboratory services to nursing homes. *Id.* ¶ 53. Shortly after the start of the COVID-19 pandemic, Landau expanded LabQ and Dart's operations into COVID-19 testing. *Id.* ¶ 54. As part of this business, LabQ and Dart submitted claims to the Uninsured Program for COVID-19 testing services. By March 2022, the Uninsured Program had paid approximately $130 million to Dart. *Id.* ¶ 59.

On June 13, 2024, the Government filed a complaint in intervention against Defendants, alleging that they violated the False Claims Act ("FCA"), 31 U.S.C. § 3729, in connection with their submission of false claims to the government for reimbursement for COVID-19 testing services. Dkt. No. 11. The Government filed an amended complaint on May 19, 2025, alleging that Defendants submitted false claims to the Uninsured Program for individuals who had health insurance, either under a federal health care program or private insurer, or whose COVID-19 test would therefore be reimbursed by another payor. AC ¶ 3.

On July 24, 2024, the Government applied under the Fair Debt Collection Practices Act ("FDCPA"), 28 U.S.C. § 3101, for garnishment and writs of attachment directed to Defendants' real properties and bank accounts. Dkt. No. 31. In its application for the writs, the Government claimed a debt in the amount of $82.9 million plus civil penalties, treble damages, and costs. Dkt. No. 42 at 39. On August 2, 2024, and September 20, 2024, the Court issued the writs (the "Writs"). Dkt. Nos. 60–95, 176, 241–98. On October 2, 2024, Defendants moved to quash them. Dkt. No. 182.

By opinion and order of March 24, 2025, the Court denied Defendants' motion to quash the writs of garnishment and attachment. Dkt. No. 357; *United States v. LabQ Clinical*

Diagnostics, LLC, 771 F. Supp. 3d 401 (S.D.N.Y. 2025). The Court noted that the Government was required only to establish "with particularity to the court's satisfaction facts supporting the probable validity of the claim for a debt and the right of the United States to recover what is demanded in the application." 28 U.S.C. § 3101(c)(1); *see* 771 F. Supp. 3d at 458. Probable cause required the Government to establish only that a person of reasonable prudence would believe that an offense had been or was being committed. *Id.* at 432. The Court found that the Government had established, and Defendants had not undermined, the probable validity of the Government's FCA claims under the theories of the presentation of a false or fraudulent claim, 31 U.S.C. § 3729(a)(1)(A), and the knowing use of a false record, 31 U.S.C. § 3729(a)(1)(B). 771 F. Supp. 3d at 439–47.

The Court also found that the Government had established the probable validity of an amount of the debt it claimed sufficient to support the Writs. *Id.* at 457–61. The writs of attachment sought by the Government encumbered $49 million in value of Defendants' property and the writs of garnishment covered eight bank accounts alleged to have held $8.869 million at the time of attachment. *Id.* at 460. In particular, the Court credited the analysis performed by Karen Lowe, an analyst at the Department of Health and Human Services Office of Inspector General, which indicated that Defendants submitted 315,526 false claims to the UIP for patients with Medicare or Medicaid coverage totaling $36.6 million or roughly 28% of the money paid by the UIP to Defendants. *Id.* at 461. Lowe arrived at that figure by comparing UIP program data to Medicare and Medicaid data and determining what percentage of the 1,114,245 claims paid by the UIP to Defendants were for patients with Medicare or Medicaid coverage at the time they received COVID-19 testing services from Defendants. *Id.*[1] Lowe did so by matching patients

[1] The matched claims were for dates of service between May 2020 and January 2022 and were

based on their date of birth and Social Security Number ("SSN") or by their first name, last name and date of birth. *Id.* The Court noted that Defendants' expert critiqued Lowe's analysis on the grounds that it did not consider addresses, counties or drivers' licenses, but concluded that such critique was insufficient to call into question the probable validity of the Government's analysis: "Defendants' argument provides grist for cross-examination or maybe even for a Daubert challenge, but it does not undermine probable validity." *Id.* Based on the fact that treble damages are available to the Government in FCA cases, the Court concluded that the amount owing to the Government would be three times $36.6 million or up to $109.8 million, easily sufficient to support the Writs encumbering property worth approximately $49 million. *Id.* at 465. The Court did not base its judgment on the Government's calculation that Defendants also improperly submitted claims covered by private insurance but expressed "significant doubt" regarding the reliability of the Government's analysis. *Id.* at 461 n.24. The Government had calculated a figure with respect to private health coverage based on the insured rate of New York State residents, but failed to adjust for the fact that Defendants delivered services primarily to residents of New York City. *Id.*

Defendants made this motion for relief from the writs on September 15, 2025. Dkt. No. 721. It supported the motion with a memorandum of law and the expert declaration of Bo Martin. Dkt. Nos. 721-1, 721-3. The Government submitted a memorandum of law in opposition to the motion and the declaration of Karen Lowe on October 17, 2025. Dkt. Nos. 748, 748-1. Defendants filed a reply memorandum of law on November 17, 2025. Dkt. No. 786. Defendants submitted a letter in support of the motion on March 7, 2026. Dkt. No. 862. The Court held oral argument on the motion on March 9, 2026.

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received by the UIP for payment between July 2020 and March 2022. Dkt. No. 721-3 ¶ 11.

DISCUSSION

Defendants assert five bases upon which the Court should reconsider its March 13, 2025 opinion and order and provide them relief from the Writs: (1) Lowe failed to consider addresses in connection with the large number of claims matched by name and date of birth which makes her analysis unreliable; (2) Defendants do not bear liability under the FCA for claims submitted for tests administered to patients with Medicaid coverage because the UIP provided coverage for patients with limited Medicaid benefits; (3) the Government's claim against Defendants for patients improperly billed to the UIP should be offset by the amounts that Defendants would have been paid had those claims been submitted to Medicare or Medicaid for reimbursement; (4) the Government should have checked on Medicare and Medicaid coverage at the time; and (5) there can be no probable validity based on treble damages. Dkt. No. 721-1.

The Court first discusses the standard of review before assessing each of Defendants' arguments.

A. Standard of Review

The Court previously considered Defendants' request for relief from the Writs. Defendants argue that the Court should disregard that prior decision and consider their motion anew on the basis that, under the FDCPA, a debtor can apply "at any time" for a hearing and as many times as it wants. Defendants assert that each time the debtor applies the Court must engage in "a fresh statutory inquiry." Dkt. No. 786 at 2–3. The Government argues that the Court must analyze "renewed motions under Rule 60" of the Federal Rules of Civil Procedure. Dkt, No. 748 at 7.

Section 3101(d)(2) provides: "By requesting, at any time before judgment on the claims for a debt, the court to hold a hearing, the debtor may move to quash the order granting such remedy." 28 U.S.C. § 3101(d)(2). The statute by its terms does not prescribe a limit on the

number of times a debtor may make a motion to quash or set forth standard the Court is to apply when a debtor makes a renewed motion to quash.

In analogous circumstances, courts have required a party seeking to modify or vacate an interlocutory restraint to show new evidence, an intervening change in controlling law, or a need to correct a clear error or prevent manifest injustice. For example, in considering whether to vacate or modify an injunction on the grounds that it should not have been entered in the first place, the Court applies the standards under either Rule 59(e) or Rule 60 of the Federal Rules of Civil Procedure. *See Lashify, Inc. v. Qingdao Network Tech. Co.*, 2026 WL 112022, at *6 (S.D.N.Y. Jan. 15, 2026). The moving party must identify an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice. *See Salamone v. Douglas Marine Corp.*, 111 F.4th 221, 232 (2d Cir. 2024); *Metzler Investment GmbH v. Chipotle Mexican Grill, Inc.*, 970 F.3d 133, 142 (2d Cir. 2020).

Likewise, in determining whether to grant relief from writs of attachment applied under Federal Rule of Civil Procedure 64, courts have required a party challenging the writs following denial of an initial motion to vacate to demonstrate a change in controlling law or present new facts. *See, e.g., Demirovic v. Ortega*, 2017 WL 5196240, at *1 (E.D.N.Y. Nov. 9, 2017) (court denied defendants' motion for reconsideration of order restraining assets, noting that "defendants do not point to any controlling decisions or material facts that the Court overlooked in rendering its decision, and none of the arguments they have presented would alter the Court's decision to issue a post-verdict restraining order"); *Fin. Servs., Inc. v. Ferrandina*, 474 F.2d 743, 744–45 (2d Cir. 1973) (noting that district court denied a second motion to vacate where "no new facts had been presented, and that 'added arguments on the same facts "postponed" or saved up for another day and another judge' were not enough to justify relitigation of the matter."); *MAG Aerospace*

Industries, LLC v. Precise Aerospace Manufacturing, Inc., 2019 WL 13020833, at *3 (C.D. Cal. Mar. 27, 2019) (party moving for reconsideration of writ of possession based on new facts); *cf. Greenlee v. Sandy's Towing & Recovery, Inc.*, 2016 WL 2907715, at *1 (S.D. Ohio May 19, 2016) (court holding that plaintiff seeking to challenge denial of motion for replevin must show new evidence, intervening authority, or manifest error of law.).

Finally, while under Rule 54(b), the court can revise an interlocutory order "at any time," "[t]he moving party ordinarily must demonstrate 'an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice.'" *In re Rezulin Prods. Liab. Litig.*, 224 F.R.D. 346, 350 (S.D.N.Y. 2004) (quoting *Virgin Atl. Airways, Ltd. v. Nat'l Mediation Bd.*, 956 F.2d 1245, 1255 (2d Cir. 1992)). "Rule 54(b) motions are subject to the law of the case doctrine." *Id.* at 349.

Defendants present no persuasive reason why the standards applicable to modification of a preliminary injunction or a second motion for relief from a Rule 64 writ of attachment or other interlocutory order would not also apply to a second motion for relief from a FDCPA writ of attachment. While Section 3101(d)(2) permits the debtor to move the Court "at any time before judgment to quash the writs and requires the court to hold a hearing once such motion is made," 28 U.S.C. § 3101(d)(2), the Section does not require the Court to give the debtors a chance to offer arguments that they could have made but did not make in a first motion to quash. Nor does Section 3101(d)(2) require the Court to disregard its earlier rulings. Writs of attachment and preliminary injunctions fall under the same category of provisional remedies, only separated in the Federal Rules of Civil Procedure by whether state or federal law governs their implementation. *See* 13 Moore's Federal Practice – Civil § 64.18 (2025) (noting that Federal Rule of Civil Procedure 64, which provides that provisional remedies like writs of attachment are

governed by state law, "was not intended to embrace all provisional remedies," such as "equitable injunctive remedy" under Rule 65). And, as with writs under the FDCPA, a motion to modify a preliminary injunction may also be made at any time. If, after having unsuccessfully opposed a motion for a preliminary injunction, the restrained party must offer newly-discovered facts or a change in controlling law or manifest injustice or clear error for the court to reconsider its earlier ruling, there is no reason that a different standard should apply when a party seeks for a second time to obtain relief from Writs restraining its use of assets. Accordingly, Defendants are required to present new evidence, a change in controlling law, or a need to correct clear error or prevent manifest injustice.

B. Reliability of the Lowe Analysis

Defendants argue that there are significant flaws in the analysis conducted by Lowe that the Court relied upon in its original opinion that are revealed by newly-disclosed evidence. As noted, Lowe determined that 315,526 of the 1,114,425 claims submitted by Defendants to the UIP were false in that they were submitted for tests administered to patients enrolled in Medicaid or Medicare. The claims submitted for tests administered to such patients totaled $36.6 million or roughly 28% of the money paid by the UIP to Defendants. 771 F. Supp. 3d at 461; Dkt. No. 36 ¶ 10. Lowe arrived at that figure by comparing the claims submitted to the UIP program to national claims data relating to claims submitted to Medicare and Medicaid, which data is maintained by Centers for Medicare & Medicaid Services ("CMS"). Dkt. No. 36 ¶ 4. If a patient included in Defendants' patient roster appeared to match a person enrolled in Medicaid or Medicare, Lowe determined that the claim was false. Lowe determined whether patients listed in the patient roster matched patients in the Medicare or Medicaid program by (1) comparing the patient date of birth and SSN as listed in Defendants' data with a person's date of birth and SSN in the Medicare and Medicaid data; and (2) by matching first name, last name and date of birth.

If, for example, the first name, last name and date of birth of a patient submitted to the UIP matched the first name, last name, and date of birth of a person enrolled in Medicaid or Medicare, Lowe assumed that the persons were the same and that the claim submitted to the UIP was false. Dkt. No. 36 ¶ 10. In her analysis, Lowe did not quantify how many claims were matched by SSN and birth date and how many were matched by name and date of birth.

In initially moving to vacate the writs, Defendants argued that there were flaws in the Lowe analysis. They argued that Lowe's analysis did not consider unique identifying information such as an address, county, or driver's license number which could help eliminate instances where the name and date of birth and procedure code may be the same but actually represent different patients. Dkt. No. 187 ¶ 70. In essence, they contended that the Lowe analysis did not account for the possibility of false positives: two people might share a name and birth date but be different people. The Court rejected that argument on the basis that the expert did not provide any quantification of the alleged error rate. *LabQ*, 771 F. Supp. 3d at 461.

Defendants' motion presents newly-discovered evidence that casts further doubt on Lowe's analysis. It does so through the affidavit of its expert, Bo Martin. It turns out that nearly all of Lowe's claimed matches (239,106 claims) were based just on matching the name and date of birth and not SSN. Dkt. No. 721-3 ¶ 15. Only 15,978 (or approximately 5.1%) involve matches of SSNs and dates of birth. *Id.* ¶ 13. It also turns out that Lowe's method of matching persons by name and date of birth alone yields a large number of false positives. In a country as large as the United States and a city as large as New York, numerous people may have the same or similar name and birth date. Defendants note that by including an additional match parameter for address, the total number of matches decreases from 255,084 to 46,854. Based on the figures that include the address, the probable validity of the debt is $5.5 million.

Martin explains:

> Stated differently, there were 46,825 claims for which either the SSN and DOB were equal,[2] or the patient name, patient DOB, and patient address were equal. . . . That is approximately 4.2% of the claims—significantly less than the 28.3% match rate for the 1,114,425 claims analyzed by Ms. Lowe. Expressed in terms of payments . . . the operative percentage is approximately 4.1%, and not the 27.8% match rate for the 1,114,425 claims analyze by Ms. Lowe.

Dkt. No. 721-3 ¶ 24. Defendants' expert also points out that there were 58,023 claims for which Lowe considered neither the SSN nor the precise patient name to be a match, but still considered the claims to be a fuzzy match, based on a methodology used to account for the fact that names may be recorded differently in different data sets even when they refer to the same individual. *Id.* ¶¶ 19–20.

The defense illustrates the point by the five examples drawn from the data which the Court agreed to treat as demonstratives. Dkt. No. 862. In one case, Lowe concluded that a male individual with an address in Brooklyn and a birth date in 1955 was enrolled in Medicare and Medicaid because six individuals with first names and last names similar to the LabQ patient were recorded as being enrolled in Medicare or Medicaid notwithstanding that only one of those individuals even lived in New York State (and then in Utica, New York, and not New York City) and the others listed addresses as far afield as Houston, Texas and Allentown, Pennsylvania. *Id.* at 2. In another case, the LabQ patient was a woman with the last name of Perez; Lowe matched her with five individuals with the first name John and a woman with the last name Pierce (whose first name did not precisely match the LabQ patient) even though none lived in New York State (and the individual with the last name Perez listed an address of Edinburg, Texas). *Id.* In a third

[2] An equal match as defined by Martin refers to exact matches, where the patient characteristics matched exactly between the UIP data and Medicare/Medicaid data. Dkt. No. 721-3 ¶¶ 13, 19. An exact or equal match stands in contrast to "fuzzy" matches, which identify matches where there may be variations in how information is recorded. *Id.* ¶ 20; Dkt. No. 748-1 at 3 n.3.

example, the LabQ patient was matched with five other individuals, only one of whom shared a name that was a precise match (but who listed an address in Miami, Florida). *Id.* at 2–3. A fourth example falls into the same pattern; though the LabQ patient shared a precise name match with four individuals, none of the supposed matches reside anywhere near New York. *Id.* at 3. The fifth example is proffered to make a different point. The LabQ patient has a common Arab name. *Id.* at 5. There are 11 matches in the Medicaid database, none of whom share the same address. *Id.* It is possible that, in the case of the fifth example, one of the individuals in the Medicaid database is the same person who received a COVID-19 test from LabQ. But without more information, it is impossible to know reliably whether it is the same individual or whether the fact that there is an apparent "match" is simply a function of the fact that the patient's first and last names are common names in the United States population.

The Government has two responses to Defendants' argument. Neither is convincing.

First, the Government claims that the argument is not cognizable because Defendants are seeking to relitigate an argument they already made. Dkt. No. 748 at 10.

Defendants can seek reconsideration or modification based on newly available evidence, *i.e.*, evidence that they did not have and could not have obtained through the exercise of due diligence. *See Ayala v. Saw Mill Lofts, LLC*, 2023 WL 5835585, at *3 (S.D.N.Y. Aug. 16, 2023). That describes the claims-related discovery and the SAS code that they obtained from the Government. Defendants moved to quash the writs on October 2, 2024. Dkt. No. 182. At the time, the defense did not have the information to challenge Lowe's analysis because the Government had not produced the underlying data and methods used therein.

Defendants sought the data Lowe relied on in her declaration in discovery requests served on September 30, 2024, the deadline for the service of initial requests for production of

documents and before the motion to quash was filed. Dkt. No. 721-1 at 1; Dkt. No. 56 at 2. However, the Government did not produce the data underlying Lowe's analysis until April 14, 2025. Dkt. No. 748 at 6. Defendants promptly requested the SAS code that was run to create Lowe's analysis on June 18, 2025. *Id.* The Government did not produce the code until August 7, 2025. Dkt. No. 721-1 at 7. The Government does not argue that Defendants had any way to obtain the information upon which Lowe relied other than through making a discovery request on the Government. Dkt. No. 748. Defendants promptly filed this motion on September 15, 2025. Dkt. No. 721. The information is properly considered and the Martin analysis addresses the gap that the Court previously found missing in the Defendants' critique.

Second, the Government argues that Lowe's decision not to consider addresses was informed, Dkt. No. 748-1 ¶ 5, and that there are problems using addresses as a matching criterion, Dkt. No. 748 at 12. The Government asserts that "while providers were instructed to provide an address as part of the patient information on a claim to the Uninsured Program, that address did not have to be the patient's own address." Dkt. No. 748 at 12.[3] It points out that approximately 92,477 of the Patient IDs in LabQ's claims data are associated with some version of LabQ's address, 140 58th St., Brooklyn, NY. Dkt. No. 748 at 12; Dkt. No. 748-1 ¶ 6. It also points out that a total of 7,704 unique patient IDs list addresses associated with nursing facilities and asserts that such addresses "may not be the same addresses the patients provided when enrolling in Medicare or Medicaid." Dkt. No. 748 at 12; Dkt. No. 748-1 ¶ 7. In the Government's view, while excluding addresses as a criterion for matching may result in there

[3] The Government provides no evidence from any witness with personal knowledge that patients were told to provide to LabQ any address other than their own. The inference from the number of claims with LabQ's address is thus not necessarily that patients regularly provided an address different from their home address. Instead, the inference may be that on those instances where a patient failed to provide an address, LabQ supplied their own.

being some false positives (identifying as "matches" relationships that are not a match), including addresses will generate false negatives (failing to identify true matches). The Government speculates "Clearly, the more than 200,000 instances where [the defense expert] did not find an address match do not correspond to different people who all have identical first names, last names, and dates of birth." Dkt. No. 748 at 12.

The question before the Court, however, is not whether Martin's analysis is accurate. It is whether the Government's analysis is reliable. In order to justify a prejudgment restraint on assets under 28 U.S.C. § 3101, the Government must establish not only the "probable validity" of its claim for a debt but also the probable validity of the amount of the debt. *LabQ*, 771 F. Supp. 3d at 459. While the Government need not offer evidence that would satisfy a preponderance of the evidence standard, it must provide more than "reasonable cause." *Id.* The standard is akin to probable cause. *Id.* at 458. The Court has noted the Due Process concerns that are implicated when the Government seeks to deprive an individual of property prior to a final adjudication. *Id.* (citing, *inter alia*, *Fuentes v. Shevin,* 407 U.S. 67, 97 (1972)). It thus is not enough to show that there exist flaws in Martin's analysis. The Government must also justify the probable validity of its analysis in the face of Martin's critique.

The Court concludes that the Government has not established the probable validity of the amount of its claim. As the Government at least implicitly concedes, there is no evidence to support that a patient who listed a nursing facility as his or her address in connection with a LabQ test would have provided a different address when enrolling in Medicaid or Medicare. As to the Government's calculation that 92,477 unique patient IDs are associated with LabQ's Brooklyn address, the Government's analysis mixes apples with oranges. Martin's analysis was based on the individuals who were matched by name and address alone. The Government

purports to show that such analysis is flawed because a person might list an address with LabQ other than their own—they might list LabQ's corporate address. But the 92,477 unique patient IDs which the Government uses to make that point are not drawn from the population of individuals whom Martin assumed were improper matches or even from the larger pool of 255,084 patients matched by date of birth and name alone from which the population of improper matches was drawn. It was drawn from Dart's claims data as a whole. Dkt. No. 748-1 ¶ 6. There is thus no reason to presume that any particular percentage of Martin's improper matches were improper solely because in one instance a patient provided LabQ's corporate address and in another his or her own proper address. Moreover, while Lowe criticizes Martin for assuming that each of the 92,477 unique patient IDs are not associated with a Medicaid or Medicare enrollee, she is herself guilty of a similar mistake. She assumes—without offering evidence or statistical analysis—that each patient of the 92,477 persons with a unique patient ID is a Medicaid or Medicare enrollee. But Martin demonstrates that matching by name and date of birth alone generates a not insignificant number of false positives. Lowe makes no effort to determine how many among the 92,477 who listed LabQ as their address are nonetheless properly matched on the basis of name and address and how many are not. Finally, even assuming, favorably to the Government, that each of the 92,477 individuals who named LabQ's address were enrolled in Medicare or Medicaid, the Government's number would still be an inflated estimate. Adding 92,477 to the 46,825 claims for which either the SSN and DOB were equal or the patient name, DOB, and address were equal, there would be 139,302 matching claims. This figure is 176,224 claims lower than the Government's estimate of claims for Medicaid/Medicare patients submitted to the UIP. It is less than half of the Government's 315,526 estimate, and would represent 12.5% of LabQ's total claims.

C. Claims Submitted for Medicaid Patients

Defendants have a further critique of the Lowe analysis and of the $36.6 million in false claims that the Court found based on it. A claim is false under the FCA only if it is knowingly made. *See United States ex rel. Schutte v. SuperValu, Inc.*, 598 U.S. 739, 747 (2023). However, Defendants point out that 80% of the claims that Lowe says were covered by public insurance at the time of testing (204,408 claims) were covered by Medicaid, not Medicare. Dkt. No. 721-1. That is critical, Defendants say, because the HRSA Frequently Asked Questions ('FAQs') told providers that the Uninsured Program "reimburses eligible claims for COVID-19 testing, treatment, and vaccination for individuals with limited Medicaid benefits if the Medicaid plan does not cover these services." Dkt. No. 721-1 at 4. The FAQs go on to state that HRSA's contractor would check "if the patient on the claim has other health care coverage using standard eligibility transactions," and that if the patient was determined to be on a Medicaid plan that covered the services that the UIP reimbursed, "the program would offset the overpayment against any pending claims from the provider." *Id.* at 9 (citing Dkt. No. 696 ¶ 2, Ex. A). From that, Defendants presume that they were permitted to submit claims for persons on Medicaid to the UIP. Defendants assert that a provider in their position was not expected to determine whether a Medicaid patient had "full" benefits or "limited" benefits. Dkt. No. 786 at 8. Defendants therefore argue that the claims were properly submitted to the Uninsured Program or, at a minimum, cannot constitute false claims. *Id.* at 8.

The Government is correct that this is an argument that Defendants could have made in connection with their original motion to quash the Writs and thus is not properly considered in connection with this motion. The Government pointed out in its application in support of the Writs that the UIP program reimbursed eligible claims for COVID-19 testing, treatment, and vaccination for individuals with limited Medicaid benefits if the Medicaid plan did not cover

those services, Dkt. No. 748 at 14 (citing Dkt. No. 230 at 15 n.14), a point that the Court itself noticed, *see* 771 F. Supp. 3d at 441 n.15. If Defendants believed that Lowe's analysis was invalid because it did not account for persons in that population and because the UIP permitted them to submit claims for persons on Medicaid, they could have made those arguments then. The argument that Defendants did not violate the FCA by submitting false claims for persons on Medicaid thus does not itself provide a basis for the Court to grant relief from the Writs.

D. Debt to the United States and the Government's Failure to Check On Medicare and Medicaid Coverage at the Time

Defendants make a further interesting argument. They assert that "even if all 315,526 claims should have been billed to Medicare or Medicaid, and not the UIP, the United States was still obligated to pay those claims," Dkt. No. 721-1 at 5, and thus Defendants owe no debt to the United States with respect to those claims. Relatedly, they assert that the Government should have checked in "real time" to see if a patient was enrolled in Medicaid or Medicare. *Id.* at 14–15. Defendants state: "The same United States Treasury was obligated to pay Defendants the same amount whether the test was for an uninsured individual or an individual covered by Medicare or Medicaid." *Id.* at 15.

Defendants could have made the same argument in connection with the original motion to quash and thus the argument is not properly considered in connection with this motion. At that stage, Defendants asserted that they could not be liable for submitting a false claim for individuals enrolled in Medicare or Medicaid because those claims would have been satisfied by the Government through the Medicare and Medicaid programs. *See* Dkt. No. 313 at 43:14–18, 66:12–16; *id.* at 98:5–13 (Government's response). The potential that claims could be reimbursed through Medicaid or Medicare did not permit them to make false statements to the UIP or shield Defendants from FCA liability. While Defendants did not specifically assert that

they would not owe a debt in connection with such claims, there is no reason they could not have made that argument.

In any event, Defendants would not be entitled to relief on the basis that claims falsely submitted to the UIP program would have been reimbursed in any event through Medicaid or Medicare. Defendants' argument sounds in the equitable doctrine of set-off, which is expressly preserved by the FDCPA. *See* 28 U.S.C. § 3003(c)(6). A creditor has an equitable right to deduct a debt it owes to a debtor from a claim it has against the debtor arising out of a separate transaction. "The right of setoff (also called 'offset') allows entities that owe each other money to apply their mutual debts against each other, thereby avoiding 'the absurdity of making A pay B when B owes A.'" *Citizens Bank of Md. v. Strumpf,* 516 U.S. 16, 18 (1995) (quoting *Studley v. Boylston Nat'l Bank,* 229 U.S. 523, 528 (1913)); *see also In re Chateaugay Corp.*, 94 F.3d 772, 780 (2d Cir. 1996) ("The right of setoff is a 'common right, which belongs to every creditor, to apply the unappropriated moneys of his debtor, in his hands, in extinguishment of the debts due to him.'" (*quoting Gratiot v. United States,* 40 U.S. (15 Pet.) 336, 370)). "Outside the bankruptcy context, it has long been established that the departments, agencies and subdivisions of the United States Government constitute a single creditor for purposes of setoff." *In re Whimsy, Inc.*, 221 B.R. 69, 72 (S.D.N.Y. 1998); *accord In re Turner*, 84 F.3d 1294, 1296–97 (10th Cir. 1996).

Assuming without deciding that a defendant who owes money to the Government as a result of the submission of a false claim can deduct from that debt the money the Government owes it arising from the same transaction, Defendants have not shown a sufficient basis for invocation of set-off here. As the Government points out, Defendants have not shown either that they have made a claim upon the Medicaid or Medicare program or that there would be a basis

for Defendants to make such a claim. The Government cannot obtain a prejudgment restraint under the FDCPA without showing the probable validity of its claim and of the amount claimed. 28 U.S.C. § 3101(a)(3), (c). By parity of reasoning, to challenge the probable validity of that claim, the defense cannot assert a right to set-off without providing some basis to believe that its claim is probably valid. *Cf. Hang v. Stang*, 2015 WL 5139128, at *5 (S.D.N.Y. Sept. 1, 2015) (Nathan, J.) (a possible unliquidated liability cannot offset a liquidated claim that is due and payable; applying New York law); *Dunn v. Uvalde Asphalt Pav. Co.*, 67 N.E. 439, 440 (N.Y. 1903) (there is no right to set off a possible but unestablished liability, unliquidated in amount, against a liquidated legal claim that is due and payable); *Spodek v. Park Prop. Dev. Assocs.*, 693 N.Y.S.2d 199, 200 (2d Dep't 1999) (there is no right to set off a possible, unliquidated liability against a liquidated claim that is due and payable). Defendants have not done so. Among other things, as the Government notes, Defendants have not shown that they were eligible for participation in Medicaid or Medicare or to reimbursement from them. *See Connecticut Dep't of Soc. Servs. v. Leavitt*, 428 F.3d 138, 151 (2d Cir. 2005) (noting that to participate in Medicare providers must "file with CMS a provider agreement.").

E. Treble Damages

After determining that the Government established a probable validity that Defendants fraudulently billed the Uninsured Program for $36.6 million in claims, the Court trebled that amount and determined that the trebled amount was sufficient to support the Writs encumbering property worth approximately $49 million. *Id.* at 465. The Court did so because the FCA authorizes treble damages. *Id.* Defendants now argue that the Court committed clear error. While Subchapter B of the FDCPA authorizes a prejudgment restraint based on a claim for a debt that is currently owing, the treble damages under the FCA are a punitive remedy that presupposes liability and does not reflect the amount owed to the United States prior to

judgment. Dkt. No. 786 at 13. The defense asserts that to support prejudgment relief under the FDCPA, a debt must be current and that, prior to judgment, trebled damages are not owing to the Government. Dkt. No. 721-1 at 15. The Government's sole response is that the FCA authorizes treble damages and therefore the Court was authorized to treble the damages to the Government before determining the amount of the debt. Dkt. No. 748 at 19. The Court concludes that it committed clear error.

Neither the Second Circuit nor any other Circuit Court has yet addressed whether Subchapter B or C of the FDCPA authorizes the restraint of assets necessary to satisfy a penalty that has yet to be incurred. *See S.E.C. v. Babikian*, 2014 WL 2069348 at *2 (S.D.N.Y. Apr. 21, 2014) ("No circuit court has yet held that claims for penalties and disgorgement for the first time, as in this case, are 'debts' for which prejudgment remedies may be sought under the FDCPA"). The district courts are divided on the issue. Several courts have held that the "debt" for purposes of the FDCPA may include the treble damages to which the Government would become entitled upon a judgment finding a FCA violation. *See United States v. Berkeley Heartlab, Inc.*, 225 F. Supp. 3d 460, 462–467 (D.S.C. 2016); *United States ex rel Doe v. DeGregorio*, 510 F. Supp. 2d 877, 884 (M.D. Fla. 2007) ("Treble damages under the False Claims Act likewise constitutes 'debt'"). Other courts have held that the debt must actually be owing before the Government can obtain a restraint against its dissipation under the FDCPA. *See United States v. Cap Quality Care, Inc.*, 400 F. Supp. 2d 295, 299 (D. Me. 2005) (holding that "debts" within the meaning of the FDCPA require "some existing financial obligation to the government" and includes alleged overpayment, but does not include "penalties and fines sought by the government for the first time in the underlying action"); *United States v. Dearborn Ref. Co.*, 777 F. Supp. 2d 1077, 1082 (E.D. Mich. 2011) ("the legislative history of FDCPA supports the Court's conclusion that an

action under FDCPA is premature until such point as the Government has a right to demand payment of an amount owed"); *Gonzalez v. Dep't of Labor*, 603 F. Supp.2d 137, 146–47 (D.D.C. 2009) ("nothing suggests that the intent of the FDCPA was to impose additional financial obligations upon parties engaging in ongoing litigation"); *see also S.E.C. v. Babikian*, 2014 WL 2069348, at *2 n.1 (S.D.N.Y. Apr. 21, 2014) (suggesting that "the FDCPA provides equitable prejudgment remedies when penalties and other money is sought for the first time in the *fraudulent transfer* context, but not in other contexts" (emphasis in original)).

The better reasoned view is that the Government cannot restrain assets under Subchapter B on the basis of a financial obligation that has not yet been incurred. Subchapter B permits the Government to seek prejudgment remedy with or following the filing of an action "on a claim for a debt." U.S. § 3101(a)(1). For Subchapter B, Congress defined a "debt" as "an amount that *is owing to the United States* on account of a fee, duty, lease, rent, service, sale of real or personal property, overpayment, fine, assessment, penalty, restitution, damages, interest, tax, bail bond forfeiture, reimbursement, recovery of a cost incurred by the United States, or other source of indebtedness to the United States, but that is not owing under the terms of a contract originally entered into by only persons other than the United States" 28 U.S.C. § 3002(3)(B) (emphasis added). The use of the present tense suggests that the debt must be currently owing to fall within Subchapter B. *See Cap Quality Care, Inc.*, 400 F. Supp. 2d at 299; *contra* 28 U.S.C. § 3301(3) (Subchapter D defining "claim" as "a right to payment, *whether or not* the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured." (emphasis added)). The term "[p]rejudgment remedy" is defined to mean "the remedy of attachment, receivership, garnishment, or sequestration . . . to be granted before judgment on the merits of a claim for a debt." 28 U.S.C. § 3002(11).

"'[C]laim,' in its ordinary sense, means a right that is *asserted*, not one that has been agreed upon or that has already been determined in a judicial proceeding." *United States v. Relief*, 2006 WL 8436382, at *3 (M.D. La. July 11, 2006); *see also* Black's Law Dictionary (a claim is "[t]he assertion of an existing right" or "[a] demand for money, property, or a legal remedy to which one asserts a right"). Putting the terms "claim" and "debt" together, the prejudgment remedy provision of the FDCPA "applies when the United States claims or asserts that there is an amount owing to it on account of [any of the reasons listed in § 3002(3)(B)] and seeks a related prejudgment remedy." *Relief*, 2006 WL 8436382, at *3. "[T]here is no need for the 'debt' to be liquidated or otherwise preexisting." *Id.* At the same time, however, the claim must be to a sum that is actually owing. The prejudgment remedy provision does not allow the Government to restrain assets on the basis of a claim that, in the future, it will be owed monies.

The legislative history, moreover, reflects that "Congress was concerned with 'delinquent debts' when it enacted FDCPA." *Dearborn Ref. Co.*, 777 F. Supp. 2d at 1081 (citing H.R.Rep. No. 101–736 (1990)); *see also United States v. Bedi*, 15 F.4th 222, 229 (2d Cir. 2021) ("the FDCPA was intended to address the growing problem of delinquent debt owing to the United States"). "Because the FDCPA allows the United States to obtain a remedy *before* judgment on a claim or a debt, the government can proceed under the statute when it alleges against a defendant claims under the FCA, regardless of whether judgment has been entered on those claims." *United States v. First Choice Armor & Equip., Inc.*, 808 F. Supp. 2d 68, 78–79 (D.D.C. 2011). "By authorizing prejudgment remedies in an action asserting a claim for an amount owing to the United States, Congress clearly intended to authorize the use of such remedies prior to a formal determination that such amount must be paid to the United States by a certain date." *Bd. of Governors of Fed. Rsrv. Sys. v. Pharaon*, 169 F.3d 110, 114 (2d Cir. 1999). As Judge

Roberts has explained, "[c]onceptually, a party that violates the FCA incurs a debt to the government as soon as the government pays the fraudulent claim." *First Choice Armor*, 808 F. Supp. 2d at 79. In contrast to the overpayments or false payments made by the Government, through which Defendants incurred a debt to the Government, the treble damages provided by the FCA would only be owed to the Government upon entry of judgment.

The meaning and scope of Subchapter B can be meaningfully interpreted by comparing it to Subchapter D of the same law. *Auburn Housing Auth. v. Martinez*, 277 F.3d 138, 144 (2d Cir. 2002) (the "meaning of a particular section in a statute can be understood in context with and by reference to the whole statutory scheme"); *Jones v. Sterling Infosystems, Inc.*, 317 F.R.D. 404, 409 (S.D.N.Y. 2016) ("[T]he preferred meaning of a statutory provision is one that is consonant with the rest of the statute." (quoting *I.R.S. v. WorldCom, Inc.*, 723 F.3d 346, 355 (2d Cir. 2013))). The two sets of provisions differ in important ways. Subchapter B applies to proceedings or civil action "on a claim for a debt." 18 U.S.C. § 3101(a). It is not applicable unless the Government asserts a claim for an amount "that is owing to the United States." 18 U.S.C. § 3002(3). When it is applicable, the Government can bring an action to restrain assets on the risk that the alleged debtor will take action with the effect of making it more difficult for the Government to collect. Section 3101(b) "contains no intent requirement." *Berkeley Heartlab*, 225 F. Supp. 3d at 470. "The sole consideration is the effect of the debtor's actions." *Cent. Med. Sys.*, 2018 WL 5112911, at *7. Subchapter D, by contrast, addresses fraudulent transfers. It permits the Government to bring an action not only as "necessary to satisfy the debt to the United States," 18 U.S.C. § 3306(a)(1), but also to seek a remedy against assets that have been fraudulently transferred, 18 U.S.C. § 3306(a)(2). And, while Congress presumably was content with the common law definition of "claim" with respect to Subchapter B as the assertion

of an existing right and did not feel the need to provide a broader definition, "for the purposes of the fraudulent transfer subchapter, the term 'claim' is defined extremely broadly." *S.E.C. v. ICP Asset Mgmt., LLC*, 2012 WL 204098, at *3 (S.D.N.Y. Jan. 24, 2012). It includes "a right to payment, whether or not the right is . . . fixed [or] contingent" "matured" or "unmatured." 28 U.S.C. § 3301(3). In other words, Subchapter D's definition of "claim" extends beyond a current right to payment to include future rights to payment, which would include penalties incurred following judgment. Thus, while Subchapter D was drafted in a manner that could permit the Government to prevent fraudulent transfers "made for the purpose of hindering the [Government's] ability to collect disgorgement, penalties, and interest from [a defendant] in the event it prevailed in [a] threatened action," *ICP Asset Mgmt*, 2012 WL 204098, at *2, Subchapter B decidedly did not grant the Government the right to obtain such relief merely on the finding that the defendant was taking action with the effect—and not with the intent—of delaying the United States. Where the Government seeks prejudgment remedies pursuant to Subchapter B, it cannot rely on treble damages to support the probable validity of the amount of debt owed. The Court erred in upholding the writs under Subchapter B on the basis of treble damages.

F. Relief

At oral argument on this motion, the Government asserted without contradiction from the defense that, regardless of the probable validity of the Lowe analysis with respect to patients enrolled in Medicaid or Medicare, it was owed money in connection with claims that were double-billed. This debt allegedly arises from circumstances in which Defendants billed the UIP for a COVID-19 test and also billed a private insurer or was paid from some other source. The Government also has alleged and offered evidence that in some instances Defendants were paid twice for the same COVID-19 test without reimbursing the UIP for its payment. Dkt. No. 493 ¶¶ 67–71. The Government also has identified evidence of financial transactions by Defendants

that would have the effect or hindering, delaying, or defrauding the United States in its effort to recover a debt. 28 U.S.C. § 3101(b)(1)(A); *see LabQ*, 771 F. Supp. 3d at 462–64. The Court did not base the Writs on such assertions of a debt and this opinion therefore does not address them. Accordingly, the Court's decision is without prejudice to the right of the Government to move for more limited relief based on claims that were double-billed. In order to ensure the effectiveness of such relief (if the Court determines to grant it), the Court will stay the effect of this Order for a period of 14 days. The parties are directed to meet and confer regarding more limited relief.

In addition, without objection by Defendants, the Government shall continue to be entitled to discovery as to Defendants' financial condition pursuant to 28 U.S.C. § 3015. Furthermore, Defendants shall continue to provide the Government with "transparency as to monthly bank statements, and mortgages and/or sales of any of the properties currently subject to the writs" as previously ordered. Dkt. No. 867 at 2.

CONCLUSION

The motion to release the writs is GRANTED. The effect of this Order is stayed for 14 days.

The Clerk of Court is respectfully directed to close Dkt. No. 721.

SO ORDERED.

Dated: March 20, 2026
New York, New York

LEWIS J. LIMAN
United States District Judge