

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

THE STATE OF DELAWARE,)	
)	
Plaintiff,)	
)	
<i>ex rel.</i>)	
)	
RUSSELL S. ROGERS,)	
)	
Plaintiff-Relator)	
)	
v.)	C.A. No. N18C-09-240 PRW
)	CCLD
)	
THE BANCORP BANK;)	
INTERACTIVE COMMUNICATIONS)	
INTERNATIONAL, INC.; AND)	
INCOMM FINANCIAL SERVICES,)	
INC.,)	
)	
Defendants.)	

Submitted: November 17, 2025

Decided: February 10, 2026

Upon Plaintiff State of Delaware's Motion to Dismiss or Stay Litigation,
GRANTED, in part.

ORDER

HAVING FULLY CONSIDERED Plaintiff State of Delaware's Motion to Dismiss Litigation (D.I. 367, 382) and its supplements (D.I. 392); Relator Russell S. Rogers's Response thereto (D.I. 385); Defendants' Response thereto (D.I. 391) and its supplements (D.I. 397); the authorities cited, and the entire record developed thus far, it appears to the Court that:

(1) In 2018, Russell S. Rogers (“Relator”) filed under seal a *qui tam*¹ Delaware False Claims and Reporting Act (“DFCRA”) complaint against the Defendants The Bancorp Bank, N.A., Interactive Communications International, Inc., and Incomm Financial Services, Inc.² Following its investigation, the State of Delaware (“State”) elected to intervene in this action as the real party in interest under 6 Del. C. § 1203(b)(4).³

(2) The Complaint alleges that the Defendants: (a) violated two DFCRA provisions—6 Del. C. §§ 1201(a)(7) and 1201(a)(3)—that respectively contain the statute’s prohibitions on “reverse false claims”; and (b) engaged in conspiracies to violate the DFCRA.⁴

(3) The Defendants moved to dismiss early on.⁵ After full briefing and argument, the Court denied their motions to dismiss in a bench ruling.⁶ The

¹ “An action brought under a statute that allows a private person to sue for a penalty, part of which the government or some specified public institution will receive.” *Qui Tam Action*, BLACK’S LAW DICTIONARY 1507 (12th ed. 2024).

² D.I. 1 (Complaint). Mindful that the parties and Court have a complete understanding of and familiarity with the factual and procedural background of this litigation, a fuller recounting thereof is dispensed with here. One can familiarize him or herself with that background by reviewing the Court’s earlier written opinions and orders. *See, e.g.*, *State ex rel. Rogers v. Bancorp Bank*, 271 A.3d 742, 743-45 (Del. Super. Ct. 2022) (“*State ex rel. Rogers I*”); *State ex rel. Rogers v. Bancorp Bank*, 307 A.3d 360, 365-69 (Del. Super. Ct. 2023) (“*State ex rel. Rogers II*”), *aff’d*, 2023 WL 8535182 (Del. Dec. 11, 2023).

³ D.I. 20 (State of Delaware’s Mot. to Intervene as a Matter of Right).

⁴ *See generally* Compl.

⁵ D.I. 77 (Defs. Interactive Communications International, Inc. and InComm Financial Services, Inc.’s Mot. to Dismiss); D.I. 79 (Def. Bancorp Bank’s Mot. to Dismiss).

⁶ D.I. 120; Feb. 7, 2020 Defs. MTD Hr’g Tr. at 120-147 (D.I. 124).

Defendants then answered the Complaint.⁷ Soon after, InComm asked the Court to bifurcate the case.⁸ The Court granted the request.⁹ Under that bifurcation order, Phase One of discovery consists of fact discovery.¹⁰

(4) During Phase One, the Defendants discovered that Relator’s Georgia counsel (who had been admitted here *pro hac vice*) obtained privileged documents and didn’t notify the Defendants.¹¹ After protracted proceedings, the Court granted InComm’s disqualification motion, in part.¹² The parties cross-appealed that ruling to the Delaware Supreme Court, which affirmed the Court’s disqualification decision in December 2023.¹³

(5) Since then, the case hasn’t yet exited Phase One. At the end of 2024, the Court granted Bancorp’s motion to compel certain discovery.¹⁴ This required the State to produce documents from the Office of Unclaimed Property (“OUP”) that

⁷ D.I. 129 (Defs. Interactive Communications International, Inc.’s and InComm Financial Services, Inc.’s Answer and Affirmative Defenses to the Compl.); D.I. 130 (Def. Bancorp Bank’s Answer to Compl.).

⁸ D.I. 138 (Letter Regarding Proposed Form of Case Management Order).

⁹ D.I. 148 (Case Management Order).

¹⁰ *Id.* at 3.

¹¹ *State ex rel. Rogers II*, 307 A.3d at 365-66; *State v. Bancorp Bank*, 2023 WL 1434058, at *1 (Del. Super. Ct. Feb. 1, 2023).

¹² *State ex rel. Rogers II*, 307 A.3d at 378-86.

¹³ *Bancorp Bank, N.A. v. Rogers*, 2023 WL 8535182 (Del. Dec. 11, 2023).

¹⁴ D.I. 363 (Order Compelling Certain Discovery).

related to its internal audit processes and history.¹⁵ The State says that for various reasons it was and is unable to secure OUP’s compliance with the Court’s Order.¹⁶

(6) Subsequently, in March 2025, the OUP initiated Administrative Proceedings against the Defendants.¹⁷ In response, the State filed this motion to dismiss.¹⁸

(7) In its now ordered preference, the State asks the Court to either stay the case until the conclusion of the Administrative Proceedings or to dismiss the case without prejudice.¹⁹ The State contends that 6 Del. C. § 1204(b) allows for dismissal without prejudice and 6 Del. C. § 1204(f) authorizes the State to resolve the case through the Administrative Proceeding.²⁰ Maybe so. But all agree that: (a) the State may now elect to pursue its remedy through an administrative proceeding,²¹ and (b) once the State elects an administrative remedy in an instance like this, a DFRCA lawsuit—*i.e.*, substantive statute-based legal claims for alleged fraud litigated in this

¹⁵ *Id.*

¹⁶ See State of Delaware’s Op. Br. in Supp. of the Mot. to Dismiss Litigation at 8 [hereinafter “State’s Op. Br.”] (D.I. 382).

¹⁷ State of Delaware’s Mot. to Dismiss Litigation ¶ 4 (D.I. 367); State’s Op. Br. at 9; Defs.’ Br. in Resp. to the State of Delaware’s Mot. to Dismiss Litigation at 12 [hereinafter “Defs.’ Resp. Br.”] (D.I. 391).

¹⁸ See generally State of Delaware’s Mot. to Dismiss Litigation.

¹⁹ State’s Op. Br. at 21-22; Oct. 28, 2025 State’s MTD Hr’g Tr. at 6-12 (D.I. 400).

²⁰ See State’s Op. Br. at 5.

²¹ See, e.g., *United States v. Wegler*, 941 F.3d 665, 670 (3d Cir. 2018).

Court—is no longer an option.²²

(8) Still, the State avers that—although the Court determines whether dismissal or stay is the proper course—dismissal without prejudice is more appropriate if the Court doesn’t stay the case.²³ With this, the Relator agrees.²⁴

(9) Six *Del. C.* § 1204(b) provides:

The Department of Justice may dismiss the action notwithstanding the objections of the party initiating the action if the party has been notified by the Department of Justice of the filing of the motion and the court has provided the party with an opportunity for a hearing on the motion.

This DFCRA provision is identical to False Claims Act’s (“FCA”) parallel provision;²⁵ DFCRA is modeled after the FCA.²⁶ As such, Delaware courts look to federal caselaw for guidance in interpreting the DFCRA.²⁷

²² See Oct. 28, 2025 State’s MTD Hr’g Tr. at 5, 8-9, 16, 28-30; Defs.’ Resp. Br. at 30-31. See also DEL. CODE ANN. tit. 6, § 1206(a) (2018) (DFCRA’s Administrative Proceedings Bar); *State ex rel. French v. Card Compliant, LLC*, 2017 WL 1483523, at *8-10, 13 (Del. Super. Ct. Apr. 21, 2017) (“*State ex rel. French II*”) (explaining DFCRA’s Administrative Proceedings Bar—then found at 6 *Del. C.* § 1206(b)—and its relation to Abandoned and Unclaimed Property Audits).

²³ State’s Op. Br. at 20-21.

²⁴ Relator Russell S. Rogers’s Resp. to the State of Delaware’s Mot. to Dismiss at 33 [hereinafter “Relator’s Resp. Br.”] (D.I. 385).

²⁵ Compare DEL. CODE ANN. tit. 6, § 1204(b) (2024) with 31 U.S.C. § 3730(c)(2)(A) (2025).

²⁶ *State ex rel. Higgins v. SourceGas, LLC*, 2012 WL 1721783, at *4 (Del. Super. Ct. May 15, 2012).

²⁷ “Because the DFCRA is modeled after the federal False Claims Act (“FCA”), the Court looks to federal case law for guidance in interpreting the DFCRA.” *State ex rel. French v. CVS Health Corp.*, 2019 WL 4668353, at *8 n.52 (Del. Super. Ct. Sept. 24, 2019) (“*State ex rel. French III*”); *State ex rel. French v. Card Compliant, LLC*, 2015 WL 11051006, at *6 (Del. Super. Ct. Nov. 23, 2015) (“*State ex rel. French I*”) (“Delaware authority interpreting the DFCRA is scant. Since the DFCRA is modeled after the federal False Claims Act, the court will look to federal case law for

(10) When the government seeks to dismiss an FCA action over a relator’s objection, federal courts are guided by the Federal Rule of Civil Procedure 41’s dismissal standard.²⁸ FCA dismissals differ from ordinary Rule 41 dismissals in that FCA dismissals require notice, an opportunity for a hearing, and consideration of the relator’s interest.²⁹ Even so, government motions to dismiss will satisfy Rule 41 in “all but the most exceptional cases.”³⁰ In a *qui tam* suit, the Court gives the government’s views substantial deference.³¹ Accordingly, if the government offers a reasonable assessment as to why it’s found the burdens of continued litigation outweigh the benefits, the trial court “should think several times over before denying [such] a motion to dismiss.”³² This is true even if the relator presents a contrary, credible assessment.³³

(11) In the State’s view, the now-commenced Administrative Proceedings will provide for the expeditious resolution of this procedurally stagnant case.³⁴ What

guidance.”); *State ex rel. Higgins*, 2012 WL 1721783, at *4 (“[T]here is a dearth of Delaware authority interpreting the DFCRA. Because the DFCRA is modeled after the federal False Claims Act (“FCA”), the Court will look to . . . federal case law, for guidance in interpreting the DFCRA.”).

²⁸ *United States, ex rel. Polansky v. Executive Health Res., Inc.*, 599 U.S. 419, 435-36 (2023).

²⁹ *Id.* at 436-37.

³⁰ *Id.* at 437.

³¹ *Id.*

³² *Id.* at 437-38.

³³ *Id.* at 438.

³⁴ State of Delaware’s Mot. to Dismiss Litigation ¶ 9.

is more, says the State, this case’s discovery has now become unduly burdensome and raises thorny separation-of-powers issues.³⁵ A strain on government resources due to litigation is a valid consideration.³⁶ The Court must afford the State and its considerations great deference.³⁷

(12) Arguing for a stay or dismissal without prejudice, Relator has expressed concern that the State may receive damages through the OUP proceedings and he may be left without recourse to ensure his share thereof.³⁸ Amazingly, State’s counsel expressed those same concerns.³⁹ And to hear the State tell it, it shouldn’t have to be bothered with following the course of the administrative proceedings from here on out to ensure the Relator’s rights are protected from here on out.⁴⁰

(13) Without doubt, as the party who initiated the action Relator may well end up being due a share of any sums collected via the Administrative Proceedings.⁴¹

³⁵ *Id.*

³⁶ See *United States ex rel. Doe v. Credit Suisse AG*, 117 F.4th 155, 159, 163 (4th Cir. 2024) (affirming district court granting motion to dismiss and the government sought dismissal because the case was a strain on resources, among other factors); *Borzilleri v. Bayer Healthcare Pharm., Inc.*, 24 F.4th 32, 39, 46 (1st Cir. 2022) (upholding district court granting dismissal when the government identified that the burden of continuing litigation would strain government resources); *United States ex rel. Henneberger v. Ticom Geomatics, Inc.*, 427 F. Supp. 3d 701, 702, 705 (E.D. Va. 2019) (granting dismissal when government sought dismissal based on “significant burden” of monitoring case and responding to a large number of discovery requests).

³⁷ *United States, ex rel. Polansky*, 599 U.S. at 437-38.

³⁸ See Relator’s Resp. Br. at 14-16.

³⁹ Oct. 28, 2025 State’s MTD Hr’g Tr. at 6-13.

⁴⁰ *Id.* at 10-13, 15.

⁴¹ See DEL. CODE ANN. tit. 6, § 1204(f)(2018); *id.* at § 1205(b).

To be sure, under the right circumstance that might require action by a court derived by rights vested from his initial suit. Even with all that, though, the Court cannot agree with the State’s position that a stay is most appropriate at this point, nor with the Relator’s position on his purported role during and control of the actual course of the Administrative Proceedings.

(14) Against this backdrop, all Defendants—highlighting the length of this litigation and the efforts they have put into defending this action—push forcefully for a dismissal with prejudice.⁴² In doing so, the Defendants turn to this Court’s Civil Rule 41(a)(2).⁴³

(15) Under Rule 41, the Court must determine whether dismissal would cause plain legal prejudice to the defendant and is obliged to act in such a way to “secure substantial justice to both parties.”⁴⁴ Here, the Defendants have been diligently defending this case since 2018. And they would experience prejudice if the Court dismissed the action without prejudice—seemingly leaving the State with some discretion and a tool to dig up its DFCRA claims from the grave.

(16) Lastly, the Defendants contend that they are entitled to attorney’s fees from the State since they have shouldered enormous expense, and it would be unfair

⁴² Defs.’ Resp. Br. at 1-5, 15-24; Oct. 28, 2025 State’s MTD Hr’g Tr. at 26-29.

⁴³ Defs.’ Resp. Br. at 15-23.

⁴⁴ *AT&T Wireless Servs., Inc. v. Fed. Ins. Co.*, 2005 WL 2155695, at *3 (Del. Super. Ct. Aug. 18, 2005) (citing *Draper v. Paul N. Gardner Defined Plan Tr.*, 625 A.2d 859, 863 (Del. 1993)).

for them to bear this at this point.⁴⁵

(17) Delaware courts adhere to the “American Rule,” which requires litigants to defray the cost of being represented by counsel.⁴⁶ Litigants are responsible for paying their own counsel fees absent statutory authority or a contractual provision requiring it.⁴⁷ This general rule and its exceptions apply to actions at law; they significantly limit the Court’s authority to order payment of attorney’s fees.⁴⁸

(18) Defendants cite no statute nor contractual provision that requires fee-shifting. What’s more, this Court has held that, absent consent by the State, it may not award counsel fees and costs against the State.⁴⁹ There is nothing here that demonstrates that the State has consented to paying fees in a circumstance such as this. Thusly, the Court can and will not award the Defendants attorney’s fees.

(19) Having heard the parties’ arguments, the State’s Motion to Dismiss the Present DFCRA Litigation is **GRANTED, as follows:**

- All Claims in the operative Complaint alleging that Defendants The Bancorp Bank, N.A., Interactive Communications International, Inc., and Incomm Financial Services, Inc. violated certain DFCRA provisions—namely, 6 Del. C. §§ 1201(a)(7) and 1201(a)(3)—or engaged

⁴⁵ Defs.’ Resp. Br. at 15.

⁴⁶ *Duncan v. STTCPL, LLC*, 2020 WL 829374, at *15 (Del. Super. Ct. Feb. 19, 2020).

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Roofers, Inc. v. Delaware Dep’t of Labor*, 2014 WL 1228911, at *2-3 (Del. Super. Ct. Mar. 25, 2014), *aff’d*, 2014 WL 7010733 (Del. Nov. 24, 2014).

in conspiracies to violate DFCRA provisions are **DISMISSED, with prejudice**. For avoidance of doubt, this means neither the State nor Relator may seek damages for any such claim via this action now that the State has sought dismissal for the purposes of pursuing administrative remedies for any of the alleged violations of Delaware's Abandoned and Unclaimed Property Law.

- The dismissal granted here is without prejudice for the sole and limited purpose of addressing any application brought by the Relator to ensure his recovery from any sums obtained by the State through the Administrative Proceedings (or other related relief) to the extent such application is within the jurisdiction of this Court and is permitted by applicable law.⁵⁰

SO ORDERED,

/s/ Paul R. Wallace

Paul R. Wallace, Judge

Original to Prothonotary

cc: All parties and Counsel of Record

⁵⁰ The parties take differing views on which Delaware court may have jurisdiction to hear such an application and what, in that instance, may be the controlling statutes. This should not be viewed as any decision on those issues now. They must be addressed only should any such application become necessary and be filed.