APPENDIX TABLE OF CONTENTS

OPINIONS AND ORDERS

REHEARING ORDERS

STATUTORY PROVISIONS

APPENDIX TABLE OF CONTENTS (Cont.)

OTHER DOCUMENTS

OPINION, U.S. COURT OF APPEALS FOR THE FIFTH CIRCUIT (JULY 16, 2024)

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

UNITED STATES OF AMERICA,
ex rel BUD CONYERS,

Plaintiffs,

UNITED STATES OF AMERICA,

Intervenor—
Appellant / Cross-Appellee,

v.

BUD CONYERS,

Plaintiff—Appellee /
Cross-Appellant.

No. 23-20227

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:06-CV-4024

Before: STEWART, DUNCAN, and ENGELHARDT,
Circuit Judges.

STUART KYLE DUNCAN, *Circuit Judge*:

After the United States settled several False Claims Act (FCA) claims with military contractor Kellogg Brown & Root (KBR), the estate of Bud Conyers sought a relator's share of the proceeds. The district court awarded the estate around $1.1 million. Both sides appealed. The estate argues it deserved a larger share, whereas the Government argues it deserved nothing because the parties settled none of the FCA claims brought by Conyers. Agreeing with the Government, we reverse.

I

The FCA "imposes civil liability on any person who presents false or fraudulent claims for payment to the Federal Government." *United States ex rel. Polansky v. Exec. Health Res., Inc.*, 599 U.S. 419, 423 (2023); *see* 31 U.S.C. §§ 3729–33. It is "enforced not just through litigation brought by the Government itself, but also through civil *qui tam* actions that are filed by private parties, called relators, 'in the name of the Government.'" *Kellogg Brown & Root Servs., Inc. v. United States ex rel. Carter*, 575 U.S. 650, 653 (2015) (quoting 31 U.S.C. § 3730(b)). When a relator files suit, the Government can intervene, assuming "primary responsibility" for the case, and can add "additional claims." § 3730(c)(1); § 3731(c); *see also* § 3730(b)(4). If the Government opts not to intervene, the relator can proceed on its own. § 3730(c)(3). Either way, the relator may be entitled to a portion of the proceeds of the suit. § 3730(d)(1)–(3).

In January 2004, the Government began investigating fraud involving KBR's contracts with the U.S. Army, leading to the prosecution of three KBR employees. In 2005, Jeff Mazon was indicted for awarding an

inflated fuel tanker subcontract to Kuwaiti subcontractor La Nouvelle General Trading and Contracting Company ("La Nouvelle") in exchange for kickbacks. In early 2006, Stephen Seamans pled guilty of wire fraud and money laundering for awarding La Nouvelle an inflated subcontract for cleaning services at an Army base, also in exchange for kickbacks. And in late 2006, Anthony Martin confessed to awarding an inflated truck and trailer subcontract to another company, First Kuwaiti Trading Company, again in exchange for kickbacks.[1]

In December 2006, Bud Conyers filed a *qui tam* suit against KBR under the FCA. Conyers had been a KBR truck driver in Kuwait and Iraq from May to December 2003. Conyers's suit, however, alleged wrongdoing different from that engaged in by Mazon, Seamans, and Martin. First, Conyers claimed "KBR used mortuary trailers to deliver consumable supplies to United States soldiers" in Iraq. Second, he claimed two KBR employees, Willie Dawson and Rob Nuble, "accepted kickbacks" in exchange for defective or nonexistent trucks. Finally, he claimed KBR managers in Kuwait "billed prostitutes to the United States."[2]

In 2013, the Government intervened in Conyers's suit and filed its own complaint in 2014. The Government's complaint included allegations about two of the schemes alleged by Conyers (mortuary trailers and defective trucks) and added separate claims

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[1] Martin later pled guilty of violating the Anti-Kickback Act. *See United States v. Martin*, 4:07-cr-40042 (C.D. Ill. July 13, 2007), Doc. No. 3.

[2] In addition to his FCA claims, Conyers brought several personal claims against KBR related to his allegedly unlawful termination.

related to Mazon, Seamans, and Martin. *See* § 3731(c) (permitting the Government "to add any additional claims with respect to which the Government contends it is entitled to relief"). During discovery, however, the Government notified the parties and the district court that it was no longer pursuing Conyers's original claims. At that point, Conyers could have continued litigating those claims himself. *See* § 3730(c)(3) ("If the Government elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action."). But he did not.

The parties settled just before trial. In a document signed by representatives of the United States, KBR, and Conyers's estate,[3] KBR agreed to pay the United States $13,677,621 for a release of certain claims involving specified "Covered Conduct." As relevant here, the Covered Conduct included only the wrongdoing by Mazon, Seamans, and Martin, not the separate wrongdoing alleged in Conyers's complaint. Claims related to "any conduct other than the Covered Conduct" giving rise to "liability to the United States (or its agencies)" were "specifically reserved and . . . not released."[4]

Conyers then moved for a relator's share of the settlement, arguing he was automatically entitled to a share because of the Government's intervention in his suit. Conyers sought twenty-five percent of the total proceeds, or about $3.5 million. The Government opposed the motion, arguing Conyers was entitled to

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[3] Conyers passed away on February 17, 2018. For simplicity, we will refer to the relator throughout this opinion as "Conyers."

[4] The agreement also expressly reserved Conyers's right to pursue the personal claims he had brought against KBR.

nothing because none of Conyers's original claims had been settled.

The district court granted Conyers's motion in part. It recognized that "the [C]overed [C]onduct d[id] not explicitly include the conduct that Mr. Conyers alleged." Nonetheless, relying on an Eighth Circuit decision, the court asked whether "there exists an overlap between" Conyers's allegations and the conduct covered by the settlement. *See Rille v. PricewaterhouseCoopers LLP*, 803 F.3d 368, 373 (8th Cir. 2015) (en banc). The court found "sufficient factual overlap," but only with respect to Martin. Both Conyers's allegations and Martin's wrongdoing, the court stated, involved "allegations of kickbacks for trucks and trailers."

True, Conyers's allegations did not involve Martin himself—they addressed different kickback schemes involving different persons, Dawson and Nuble. But the district court believed such "details" were "inconsequential because equity aids the statute in ensuring that a relator does not lose the favor of the statute based on the government's determination of how and on what basis it will proceed, either to trial or in settling the case." The court reasoned that Conyers "put the government on notice" of fraud in trucking contracts "and arguably impelled and/or focused its investigation into Mr. Martin's conduct." The court did not award Conyers any part of the settlement of the Mazon and Seamans claims, however. Dividing the three claims (*i.e.*, Martin, Mazon, and Seamans) equally, the court awarded Conyers over $1.1 million. It also *sua sponte* ordered the Government to pay Conyers's "reasonable attorney's fees."

Each side unsuccessfully moved for reconsideration. Both sides then appealed. A motions panel of our court denied Conyers's motion to dismiss the Government's appeal as untimely.[5]

II

"We review pure questions of law and mixed questions of law and fact *de novo*." *GIC Servs., L.L.C. v. Freightplus USA, Inc.*, 866 F.3d 649, 666 (5th Cir. 2017).

III

On appeal, the Government argues the district court erred by:

(1) awarding Conyers a share of a settled "claim" factually unrelated to Conyers's own claims, *see* § 3730(d)(1);

(2) awarding the maximum share of that claim (25%), without any showing that Conyers "substantially contributed" to its prosecution, *ibid.*; and

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[5] Conyers re-urges this argument before our panel. Although the motions panel does not bind us, *see Newby v. Enron Corp.*, 443 F.3d 416, 419 (5th Cir. 2006), we agree that the Government's appeal was timely. Conyers argues the Government failed to appeal within 60 days of the district court's initial order. *See* FED. R. APP. P. 4(a)(1)(B). But, as the motions panel explained, that is not the relevant date. The Government timely appealed within 60 days of the order denying reconsideration. *See* FED. R. APP. P. 4(a)(4)(A) (providing "the time to file an appeal runs for all parties from the entry of the order disposing of" a motion for reconsideration, if filed).

(3) awarding Conyers attorney's fees from the Government instead of the defendant. *Cf. ibid.* ("All such expenses, [attorney's] fees, and costs shall be awarded against the defendant.").

We agree with the Government on the first issue and so need not reach the second and third.

A

The parties' dispute centers on this FCA provision, entitled "Award to qui tam plaintiff":

> If the Government proceeds with an action brought by a person under subsection (b) [*i.e.*, a relator], *such person shall . . . receive at least 15 percent but not more than 25 percent of the proceeds of the action or settlement of the claim*, depending upon the extent to which the person substantially contributed to the prosecution of the action.

Ibid. (emphasis added). According to the Government, this provision lets a relator recover only from a settlement of his own "claim," not from a settlement of factually unrelated claims added by the Government. The Government relies principally on the Eighth Circuit's *en banc* decision in *Rille*. *See Rille*, 803 F.3d at 372 ("The relators' right to recovery is limited to a share of the settlement of *the claim that they brought*." (emphasis added)). Conyers, by contrast, argues the provision lets a relator recover from the total settlement, including proceeds attributable to the settlement of other claims.

To umpire this disagreement, we start with § 3730 (d)(1)'s text. It promises relators a cut of "the proceeds

of the . . . settlement of *the claim*" (emphasis added). Which claim, you ask? The provision tells us: a claim in "an action brought by a person under subsection (b)," *ibid.*, which is the subsection permitting a relator to "bring a civil action for a violation of section 3729." § 3730(b). And section 3729, in turn, sets out the grounds for FCA liability. *See, e.g.*, § 3729(a)(1)(A) (making a person liable if he "knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval"). Putting those pieces together, a "claim" under § 3730(d)(1) is one brought by a relator to enforce § 3729. *See Rille*, 803 F.3d at 372 (agreeing "the claim" under § 3730(d)(1) is one "'brought by' the relator in 'an action' that he initiates"). So, the text supports the Government's argument that a relator can share in the settlement only of his own "claim."

Context also supports the Government. The next subsection, § 3730(d)(2), gives a relator a larger share for "settling the claim" if the Government opts not to proceed. The phrase in (d)(2)—"settling the claim"—could refer only to the claim initially brought by the relator. We see no reason to read the nearly identical phrase in (d)(1)—"settlement of the claim"—any differently. *See Rille*, 803 F.3d at 372 (same); *see also* A. SCALIA & B. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 170 (2012) ("A word or phrase is presumed to bear the same meaning throughout a text.").

The FCA's next section also supports the Government. Section 3731(c) addresses how the Government can add "additional claims," as it did here. By filing its own complaint or amending the relator's complaint, the Government can "clarify or add detail to *the claims*

in which the Government is intervening" or "add any *additional claims* with respect to which the Government contends it is entitled to relief." *Ibid.* (emphasis added). So, § 3731(c) addresses both a relator's own "claims" and the Government's "additional claims." By contrast, § 3730(d)(1) addresses only "the claim" brought by a relator under § 3730(b). We cannot amend that phrase to include "claims added by the Government." Only Congress can do so.

Conyers advances no plausible alternative reading of "the claim" in § 3730(d)(1).[6] He focuses instead on the nearby phrase "proceeds of the action." *See id.* § 3730(d)(1) (entitling relator to a share "of the proceeds of the action or settlement of the claim"). That phrase, he argues, means that a relator may share in the total settlement proceeds, even from the settlement of claims the relator never brought. We disagree.

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[6] In a footnote in his reply brief, Conyers suggests that "claim" in § 3730(d)(1) refers not to a relator's FCA action, but instead to the underlying "false claim" for which recovery is sought. Conyers forfeited this argument by first raising it in his reply brief. *See Alejos-Perez v. Garland*, 93 F.4th 800, 807 (5th Cir. 2024). The argument fails anyway. Conyers relies on the definition of "claim" in § 3729(b)(2), but that definition is expressly limited to § 3729 and does not apply to § 3730. *See* § 3729(b) (defining words "[f]or purposes of this section"). Besides, § 3729 uses "claim" in a different sense than § 3730. In § 3729, the word refers to the wrongdoing that gives rise to a defendant's FCA liability. *See, e.g.*, § 3729(a)(1)(A) (creating liability if "any person . . . knowingly presents . . . a false or fraudulent *claim* for payment or approval" (emphasis added)). By contrast, § 3730 uses the word to refer to an "action" a relator brings to vindicate a violation of § 3729. *See* § 3730(b)(1) ("A person may bring a civil action for a violation of section 3729 for the person and for the United States Government."); *see also* § 3730(e)(4)(A) (referring to "an action or claim under this section").

Conyers's argument would red-line the phrase like this: "the proceeds of the action ~~or settlement of the claim~~." § 3730(d)(1); *see Rille*, 803 F.3d at 372 ("If proceeds of a settlement were covered by the first object concerning 'proceeds of the action,' then the second object concerning settlement of the claim would be superfluous."). That is no way to read a statute. *See, e.g.*, *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) ("It is 'a cardinal principle of statutory construction' that 'a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.'" (quoting *Duncan v. Walker*, 533 U.S. 167, 174 (2001))).[7]

Conyers's view also clashes with other parts of the FCA. For instance, instead of teaming up with the relator, the Government can pursue claims through an "alternate remedy," including a separate settlement. *See* § 3730(c)(5); *United States ex rel. Bledsoe v. Cmty. Health Sys., Inc.*, 342 F.3d 634, 649 (6th Cir. 2003). In that event, the relator receives the share he "would

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[7] Conyers's argument also assumes that the "proceeds of the action" necessarily includes the proceeds of *every* claim in that action. That is by no means clear from the FCA's text. As the Government points out, the FCA frequently uses the terms "action" and "claim" "interchangeably," since "the statute is based on the model of a single-claim complaint." *United States ex rel. Lovell v. AthenaHealth, Inc.*, 56 F.4th 152, 159–60 (1st Cir. 2022); *see also United States ex rel. Merena v. SmithKline Beecham Corp.*, 205 F.3d 97, 101 (3d Cir. 2000) (Alito, J.) (discussing this statutory "quirk"). Furthermore, even a relator's share of the "proceeds of the action" depends on the "extent to which [he] substantially contributed to the prosecution of the action," suggesting the relator may not be entitled to share in the proceeds of every claim in a multi-claim action. § 3730(d)(1). In any event, we need not decide these questions because this case involves a settlement only.

have had" if the Government had intervened under § 3730(d)(1). § 3730(c)(5); *see Rille*, 803 F.3d at 373. Courts applying this provision permit the relator to recover only insofar as the settled claim "overlaps" with the relator's claim. *See Bledsoe*, 342 F.3d at 650–51; *Rille*, 803 F.3d at 373. Conyers's view would bring these two paths into conflict. If the Government intervened under § 3730(d)(1) and added non-overlapping claims, Conyers would award relators a share of the entire settlement. *See Rille*, 803 F.3d at 373 ("Given the equivalence of recovery required by § 3730(c)(5) and § 3730(d), it follows that the relator also has no right to a share if the government adds the non-overlapping claim to the original action after intervening."). We decline to create this "unwarranted disparit[y]" between FCA provisions that are meant to work in harmony. *Ibid*.[8]

Finally, Conyers's argument fights against the FCA's purposes. *See Dolan v. U.S. Postal Serv.*, 546 U.S. 481, 486 (2006) ("Interpretation of a word or

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[8] Conyers's view also sits uneasily with the FCA's "first-to-file" rule. Under that rule, once one relator "brings an action," another relator cannot "intervene or bring a related action based on the facts underlying the pending action." § 3730(b)(5). To apply the rule, courts—including ours—conduct a "claim-by-claim analysis." *See, e.g.*, *United States ex rel. Branch Consultants v. Allstate Ins. Co.*, 560 F.3d 371, 378–80 (5th Cir. 2009); *Merena*, 205 F.3d at 102; *United States v. Millenium Lab'ys, Inc.*, 923 F.3d 240 (1st Cir. 2019). That is, courts consider each claim individually, separating genuinely new claims from recycled ones. *Merena*, 205 F.3d at 102; *see also Branch Consultants*, 560 F.3d at 378–80 (proceeding claim-by-claim and dismissing only some as barred by first-to-file rule). If a relator's right to proceed with an FCA suit is determined on a claim-by-claim basis, that suggests his right to recover should be, too.

phrase depends upon reading the whole statutory text, considering the purpose and context of the statute[.]"). When the Government intervenes, the statute calibrates a relator's share according to how much he contributed to the suit. *See* § 3730(d)(1) (awarding relator fifteen to twenty-five percent, "depending upon the extent to which the [relator] substantially contributed to the prosecution of the action"). Yet Conyers would let relators share in settlements of claims they never brought. *See Rille*, 803 F.3d at 373 ("It . . . would be inconsistent with the purposes of the Act to permit a relator automatically to receive a share of the proceeds when the relator might have had nothing to do with the government's recovery on a particular claim that was added after the government's intervention."). What's more, the FCA gives relators a greater share when the Government does *not* intervene. *See* § 3730 (d)(2) (awarding relator twenty-five to thirty percent of proceeds "[i]f the Government does not proceed with an action under this section"). Yet, paradoxically, Conyers would give relators a bigger payday if the Government *does* intervene and settles new claims in addition to a relator's. "It is hard to see why Congress might have wanted the fortuity of government intervention" to increase a relator's recovery, contrary to the purpose shown on the face of the statute. *Merena*, 205 F.3d at 105; *see also Biden v. Nebraska*, 143 S. Ct. 2355, 2379 (2023) (Barrett, J., concurring) (statutory "[c]ontext . . . includes common sense").

* * *

In sum, the text and context of § 3731(d)(1), as well as the larger purposes of the FCA, all support the Government's view that a relator is entitled to a share

only of a settled "claim" he brought, not additional claims added by the Government.

B

The district court seemed to concede that the settled "claims" were distinct from the "claims" brought by Conyers. Yet the court went on to consider whether those claims "factually overlap," such that Conyers should be entitled to some share in the settlement. In doing so, the court applied a test adopted by some circuits for assessing whether a settled "claim" is sufficiently similar to a relator's "claim" under § 3730(d)(1).

As stated by the *en banc* Eighth Circuit: "[A] relator seeking recovery must establish that there exists an overlap between [his] allegations and the conduct discussed in the settlement agreement." *Rille*, 803 F.3d at 373 (cleaned up) (quoting *Bledsoe*, 342 F.3d at 651). This test "ensure[s] that the claim for which recovery is sought is one that the relator [him]self actually brought to the government's attention." *United States ex rel. Kennedy v. Novo A/S*, 5 F.4th 47, 57–58 (D.C. Cir. 2021). At the same time, it prevents the government from "depriv[ing] the relator of his right to recover simply by recasting the same or similar factual allegations in a new claim or by pursuing the substance of the relator's claim in an alternate proceeding." *Rille*, 803 F.3d at 374.

Our court has not adopted this "factual overlap" test for § 3730(d)(1) settlements. We need not consider whether to do so in this case. That is because the facts of the settled claims and the facts of Conyers's own claims do not "overlap" in any relevant way.

Recall that the settlement agreement described the "Covered Conduct" as wrongdoing by KBR employees Mazon, Seamans, and Martin. Specifically, it alleged that Mazon and Seamans accepted kickbacks for awarding inflated fuel tanker and cleaning services subcontracts. And it alleged that Martin did the same with respect to a truck and trailer subcontract. The settlement agreement expressly reserved the Government's right to pursue any other FCA claims against KBR.

Conyers's complaint, however, contains no mention of Mazon, Seamans, or Martin. And, as noted, it alleged entirely different wrongdoing. First, it claimed KBR improperly used mortuary trailers to deliver supplies. Second, it alleged KBR employees Dawson and Nuble took kickbacks for paying for defective or nonexistent trucks. Third, it claimed KBR employees billed the United States for prostitutes. These allegations had nothing to do with any wrongdoing by Mazon, Seamans, or Martin.

The upshot is that the Covered Conduct does not overlap with any of Conyers's allegations. The district court correctly concluded as much with respect to Conyers's claims about mortuary trailers and prostitutes. But it erred by finding that Conyers's allegations involving Dawson and Nuble overlapped with Martin. Yes, at a conceptual level, both claims happen to involve trucks and kickbacks. But the similarities stop there. The claims involve neither the same kickback schemes nor the same KBR employees. The district court conceded as much: "the covered conduct does not explicitly include the conduct that Mr. Conyers alleged."

Nonetheless, the district court dismissed such "details" as "inconsequential." We disagree. Those details are the whole point. A court performs the overlap analysis to discern whether the Government has settled what are in essence the *relator's* claims.[9] That necessarily involves comparing the facts of particular claims. *See, e.g.*, *Bledsoe*, 342 F.3d at 651 (deeming allegations of general Medicare miscoding "too broad to support a factual finding of overlap" with settled claim involving "diagnostically related group" miscoding, specifically). Viewed in this proper light, Conyers' allegations do not overlap with any the misconduct described in the settlement agreement. *Ibid*. Said another way, the settlement agreement did not settle Conyers' claims—to the contrary, it expressly reserved the Government's right to pursue them.

The district court also suggested Conyers should recover because he "arguably" spurred the investigation into Martin's misconduct. That finding lacks any record support. The district court accepted Conyers's assertion that he first presented his allegations to the Government in 2003, despite only suing in 2006. Conyers insists he emailed the Army's Criminal Investigation Division ("CID") in 2003, alerting it to the wrongdoing eventually alleged in Conyers's complaint. Conyers has no record of this email, however. An Army CID special agent, meanwhile, submitted a dec-

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[9] *See Novo A/S*, 5 F.4th at 57–58 (the overlap test "ensure[s] that the claim for which recovery is sought is one that the relator [him]self actually brought to the government's attention"); *Rille*, 803 F.3d at 374 (in overlap analysis, court must consider whether the settled claim can "fairly be characterized" as the relator's claim).

laration stating there is no record of it in the Army CID's internal database, either.

But even assuming the record supported the notion that Conyers "spurred" the investigation into Martin, that would still not entitle Conyers to a relator's share. That is because, once again, a "relator's right to recovery [under § 3730(d)(1)] is limited to a share of the settlement of the claim *that [he] brought*." *Rille*, 803 F.3d at 372 (emphasis added). By its terms, § 3730(d)(1) does not entitle the relator to recover from new claims the Government brings after discovering additional wrongdoing—even if the relator "impelled" the government's investigation. The Eighth Circuit correctly rejected this "catalyst" theory as contrary to the statutory text. *Id.* at 374 ("Whatever the merit of this theory as a policy matter, it is not derived from the statute."). We do, too.

Accordingly, assuming *arguendo* that an "overlap" analysis applies to § 3730(d)(1), the district court erred in finding that the settled claims overlap with Conyers's own claims.[10]

[10] For the same reasons, we reject Conyers's arguments on cross-appeal that he was entitled to a larger relator's share than the district court awarded him.

In sum, Conyers is not entitled to any share of the settlement proceeds.[11]

REVERSED.

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[11] Because the district court erred on the merits, the court also erred in awarding Conyers expenses and attorney's fees. *See Brady v. Hous. Indep. Sch. Dist.*, 113 F.3d 1419, 1425 (5th Cir. 1997). The Government independently argues that the court's fee order is wrong because the FCA specifically precludes a fee award against the Government and, additionally, does not waive sovereign immunity. *See* §§ 3730(d)(1) ("All such expenses, fees, and costs shall be awarded *against the defendant*." (emphasis added)); 3730(f) ("The Government is not liable for expenses which a person incurs in bringing an action under this section."); *see also, e.g.*, *Barco v. Witte*, 65 F.4th 782, 784 (5th Cir. 2023) (to recover attorney's fees against the Government, waiver of sovereign immunity must be "express" and "unequivocal"). Because we side with the Government on the merits and reverse the fee award for that reason, we need not reach those issues.

JUDGMENT, U.S. COURT OF APPEALS FOR THE FIFTH CIRCUIT (JULY 16, 2024)

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

UNITED STATES OF AMERICA,
ex rel BUD CONYERS,

Plaintiffs,

UNITED STATES OF AMERICA,

Intervenor—
Appellant / Cross-Appellee,

v.

BUD CONYERS,

Plaintiff—Appellee /
Cross-Appellant.

No. 23-20227

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:06-CV-4024

Before: STEWART, DUNCAN, and ENGELHARDT,
Circuit Judges.

JUDGMENT

This cause was considered on the record on appeal and was argued by counsel.

IT IS ORDERED and ADJUDGED that the judgment of the District Court is REVERSED.

IT IS FURTHER ORDERED that Appellee pay to Appellant the costs on appeal to be taxed by the Clerk of this Court.

The judgment or mandate of this court shall issue 7 days after the time to file a petition for rehearing expires, or 7 days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, whichever is later. *See* Fed. R. App. P. 41(b). The court may shorten or extend the time by order. *See* 5th Cir. R. 41 I.O.P.

Certified as a true copy and issued as the mandate on Sep 30, 2024

Attest:

/s/ Lyle W. Cayce
Clerk
U.S. Court of Appeals, Fifth Circuit

**MEMORANDUM OPINION AND ORDER,
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
(FEBRUARY 9, 2023)**

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION

UNITED STATES OF AMERICA,

v.

KELLOGG BROWN & ROOT INC, et al.,

Defendants.

Civil Action No. 4:06-CV-04024

Before: Kenneth M. HOYT,
United States District Judge.

MEMORANDUM OPINION AND ORDER

I. Introduction

Before the Court is the relator's, Estate of Bud Conyers ("Mr. Conyers") corrected motion (DE 462) to set his share of a settlement between himself, the government, and Kellogg Brown & Root, Inc. ("KBR"). The government has filed a response (DE 464), Mr. Conyers has filed a reply (DE 466), and both parties appeared before the Court for a hearing on this motion (DE 471). After reviewing the motion, the response, the reply, the record, the applicable law, and the

hearing transcript, the Court determines that the relator's motion should be GRANTED IN PART and DENIED IN PART.

II. Background

The relator, Bud Conyers, filed his *qui tam* action against KBR in 2006. In 2014, the government intervened under the False Claims Act, 31 U.S.C. § 3731. The parties settled in 2022, with KBR agreeing to pay the United States $13,677,621. As for Mr. Conyers, the settlement agreement released KBR "from any liability to the Relator arising from the filing of the Civil Action," and Mr. Conyers voluntarily dismissed his *qui tam* action with prejudice (DE 449). Nonetheless, Mr. Conyers retained his rights under the False Claims Act to a share of the settlement proceeds. This Court retained jurisdiction to resolve disputes over his share.

III. Analysis

A. The False Claims Act and Factual Overlap

This dispute centers on the interpretation of 31 U.S.C. § 3730(d)(1), a subsection of the False Claims Act. The relevant portion states: "If the Government proceeds with an action brought by a person under subsection (b), such person shall . . . receive at least 15 percent but not more than 25 percent *of the proceeds of the action or settlement of the claim*." *Id.* (emphasis added). The question, therefore, is whether Mr. Conyers may recover a portion of the settlement where the covered conduct does not explicitly include the conduct that Mr. Conyers alleged.

The Court's analysis is guided by *Rille v. PricewaterhouseCoopers LLP*, 803 F.3d 368 (8th Cir. 2015). In that case, the government objected to a relator's recovery because the relator did not plead the conduct that formed the basis of the claims that the government settled. The court reasoned that "a relator seeking recovery must establish that there exists [an] overlap between Relator's allegations and the conduct discussed in the settlement agreement." *Id.* at 373 (quoting *United States ex rel. Bledsoe v. Community Health Systems, Inc.*, 342 F.3d 634, 651 (6th Cir.2003)). The court clarified that the overlap must be "factual." *Rille*, 803 F.3d 368 at 374. As the Eighth Circuit explained, it would be "inconsistent with the purposes of the [False Claims] Act to permit a relator automatically to receive a share of the proceeds when the relator might have had nothing to do with the government's recovery on a particular claim." *Id.* at 373.

B. Mr. Conyers' Allegations and the Settlement's Covered Conduct

The next question is whether the settlement's covered conduct overlaps with Mr. Conyers' three *qui tam* allegations. The first alleges that KBR used mortuary trailers to deliver consumable supplies to United States soldiers. The second alleges that KBR managers billed prostitutes to the United States. The third alleges that two KBR employees accepted kickbacks from truck suppliers; specifically, that Willie Dawson accepted kickbacks for trucks, trailers, and equipment in exchange for accepting defective vehicles, and that Rob Nuble accepted kickbacks in exchange for charging the United States for more trucks than the supplier delivered.

The settlement's covered conduct includes three employees' conduct—Stephen Seamans, Jeff Mazon, and Anthony Martin. Mr. Seamans inflated bids for a cleaning contract in exchange for kickbacks, and Mr. Mazon did the same with a fuel contract. Mr. Martin received kickbacks that inflated the price of truck and trailer contracts that were formed after Mr. Conyers began working for KBR.

The Court finds there is sufficient factual overlap between Mr. Conyers' allegations of kickbacks for trucks and trailers and the government's allegations of kickbacks for trucks and trailers. The details concerning the guilty parties or the specific vehicles *and* their use are inconsequential because equity aids the statute in ensuring that a relator does not lose the favor of the statute based on the government's determination of how and on what basis it will proceed, either to trial or in settling the case. The facts establish that in December of 2003, Mr. Conyers reported the fraud he alleged to both the United States Army and KBR's Office of Internal Affairs. Alerting the government to fraud in the form of kickbacks for truck contracts put the government on notice of the practice and arguably impelled and/or focused its investigation into Mr. Martin's conduct. On the other hand, the Court does not find sufficient factual overlap between the covered conduct and Mr. Conyers' two other claims.

The next question is apportionment. The settlement agreement does not indicate the weight of each claim. Accordingly, the Court weighs each of the settled claims equally, entitling Mr. Conyers to a percentage of one third of the total settlement amount of $13,677,621—$4,559,207. The Court determines that the appro-

priate percentage is 25%. The Act instructs that a relator shall receive "at least 15 but not more than 25 percent . . . depending upon the extent to which the [relator] substantially contributed to the prosecution of the action." 31 U.S.C. § 3730(d)(1). Mr. Conyers supported the government's investigation through multiple meetings and phone calls, and the government has not produced documents establishing that it was aware of the fraud before Mr. Conyers' report. Additionally, the government has not argued for an alternative percentage, other than 0%. For these reasons, the Court concludes that Mr. Conyers is entitled to 25% of one third of the total settlement amount—$1,139,801.75.

Therefore, IT IS ORDERED that the United States of America pay to the relator, the Estate of Bud Conyers, the sum of $1,139,801.75, plus reasonable attorney's fees, within 60 days of this memorandum—failing that, the Court will enter a Final Judgment in that same amount along with interest and attorney's fees.

It is so ORDERED.

SIGNED on February 9, 2023, at Houston, Texas.

/s/ Kenneth M. Hoyt
United States District Judge

ORDER DENYING PETITION FOR REHEARING, U.S. COURT OF APPEALS FOR THE FIFTH CIRCUIT (SEPTEMBER 20, 2024)

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

UNITED STATES OF AMERICA,
ex rel BUD CONYERS,

Plaintiffs,

UNITED STATES OF AMERICA,

Intervenor—
Appellant / Cross-Appellee,

v.

BUD CONYERS,

Plaintiff—Appellee /
Cross-Appellant.

No. 23-20227

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:06-CV-4024

Before: STEWART, DUNCAN, and ENGELHARDT,
Circuit Judges.

ON PETITION FOR REHEARING

PER CURIAM:

IT IS ORDERED that the petition for rehearing is DENIED.

ORDER DENYING RECONSIDERATION OF SETTLEMENT AWARD, U.S. DISTRICT COURT, SOUTHERN DISTRICT OF TEXAS (MARCH 16, 2023)

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION

UNITED STATES OF AMERICA,

v.

KELLOGG BROWN & ROOT INC, et al.,

Defendants.

Civil Action No. 4:06-CV-04024

Before: Kenneth M. HOYT,
United States District Judge.

ORDER

Before the Court are cross-motions for reconsideration from the relator, Estate of Bud Conyers (DE 475), and the United States of America (DE 476), of this Court's order dated February 09, 2023 (DE 474). That order granted in part and denied in part a motion to set the relator's share of settlement proceeds (DE 462). The United States has responded to the relator's motion (DE 480), and the relator has responded to the United States (DE 482).

After having carefully considered the motions for reconsideration, the response, and the applicable law, the Court determines that both motions for reconsideration should be, and are, DENIED. The Estate of Bud Conyers is directed to file a request for a reasonable attorney's fee within 10 days of this Order. The United States shall respond within 20 days of receipt.

It is so **ORDERED**.

SIGNED on March 16, 2023, at Houston, Texas.

/s/ Kenneth M. Hoyt
United States District Judge

STATUTORY PROVISIONS

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31 U.S. CODE § 3729 - False Claims

(a) Liability for Certain Acts.—

(1) In general.—Subject to paragraph (2), any person who—

(A) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;

(B) knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;

(C) conspires to commit a violation of subparagraph (A), (B), (D), (E), (F), or (G);

(D) has possession, custody, or control of property or money used, or to be used, by the Government and knowingly delivers, or causes to be delivered, less than all of that money or property;

(E) is authorized to make or deliver a document certifying receipt of property used, or to be used, by the Government and, intending to defraud the Government, makes or delivers the receipt without completely knowing that the information on the receipt is true;

(F) knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Government, or a member of the Armed Forces, who lawfully may not sell or pledge property; or

(G)knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government,

is liable to the United States Government for a civil penalty of not less than $5,000 and not more than $10,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note; Public Law 104–410 [1]), plus 3 times the amount of damages which the Government sustains because of the act of that person.

(2) Reduced damages.—If the court finds that—

(A) the person committing the violation of this subsection furnished officials of the United States responsible for investigating false claims violations with all information known to such person about the violation within 30 days after the date on which the defendant first obtained the information;

(B) such person fully cooperated with any Government investigation of such violation; and

(C) at the time such person furnished the United States with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this title with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation,

the court may assess not less than 2 times the amount of damages which the Government sustains because of the act of that person.

(3) Costs of civil actions.—

A person violating this subsection shall also be liable to the United States Government for the costs of a civil action brought to recover any such penalty or damages.

(b) Definitions.—For purposes of this section—

(1) the terms "knowing" and "knowingly"—

(A) mean that a person, with respect to information—

(i) has actual knowledge of the information;

(ii) acts in deliberate ignorance of the truth or falsity of the information; or

(iii) acts in reckless disregard of the truth or falsity of the information; and

(B) require no proof of specific intent to defraud;

(2) the term "claim"—

(A) means any request or demand, whether under a contract or otherwise, for money or property and whether or not the United States has title to the money or property, that—

(i) is presented to an officer, employee, or agent of the United States; or

(ii) is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the Government's behalf

or to advance a Government program or interest, and if the United States Government—

(I) provides or has provided any portion of the money or property requested or demanded; or

(II) will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded; and

(B) does not include requests or demands for money or property that the Government has paid to an individual as compensation for Federal employment or as an income subsidy with no restrictions on that individual's use of the money or property;

(3) the term "obligation" means an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, from statute or regulation, or from the retention of any overpayment; and

(4) the term "material" means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.

(c) Exemption From Disclosure.—

Any information furnished pursuant to subsection (a)(2) shall be exempt from disclosure under section 552 of title 5.

(d) Exclusion.—

This section does not apply to claims, records, or statements made under the Internal Revenue Code of 1986.

(Pub. L. 97–258, Sept. 13, 1982, 96 Stat. 978; Pub. L. 99–562, § 2, Oct. 27, 1986, 100 Stat. 3153; Pub. L. 103–272, § 4(f)(1)(O), July 5, 1994, 108 Stat. 1362; Pub. L. 111–21, § 4(a), May 20, 2009, 123 Stat. 1621.)

31 U.S. CODE § 3730
Civil Actions for False Claims

(a) Responsibilities of the Attorney General.—

The Attorney General diligently shall investigate a violation under section 3729. If the Attorney General finds that a person has violated or is violating section 3729, the Attorney General may bring a civil action under this section against the person.

(b) Actions by Private Persons.—

(1) A person may bring a civil action for a violation of section 3729 for the person and for the United States Government. The action shall be brought in the name of the Government. The action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting.

(2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the Government pursuant to Rule 4(d)(4) [1] of the Federal Rules of Civil Procedure. The complaint shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders. The Government may elect to intervene and proceed with the action within 60 days after it receives both the complaint and the material evidence and information.

(3)The Government may, for good cause shown, move the court for extensions of the time during

which the complaint remains under seal under paragraph (2). Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until 20 days after the complaint is unsealed and served upon the defendant pursuant to Rule 4 of the Federal Rules of Civil Procedure.

(4) Before the expiration of the 60-day period or any extensions obtained under paragraph (3), the Government shall—

(A) proceed with the action, in which case the action shall be conducted by the Government; or

(B) notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.

(5) When a person brings an action under this subsection, no person other than the Government may intervene or bring a related action based on the facts underlying the pending action.

(c) Rights of the Parties to Qui Tam Actions.—

(1)If the Government proceeds with the action, it shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the person bringing the action. Such person shall have the right to continue as a party to the action, subject to the limitations set forth in paragraph (2).

(2)

(A) The Government may dismiss the action notwithstanding the objections of the person initiating the action if the person has been notified by the Government of the filing of the motion and the court has provided the person with an opportunity for a hearing on the motion.

(B) The Government may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera.

(C) Upon a showing by the Government that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the Government's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, such as—

(i) limiting the number of witnesses the person may call;

(ii) limiting the length of the testimony of such witnesses;

(iii) limiting the person's cross-examination of witnesses; or

(iv) otherwise limiting the participation by the person in the litigation.

(D) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

(3) If the Government elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action. If the Government so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts (at the Government's expense). When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the Government to intervene at a later date upon a showing of good cause.

(4) Whether or not the Government proceeds with the action, upon a showing by the Government that certain actions of discovery by the person initiating the action would interfere with the Government's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than 60 days. Such a showing shall be conducted in camera. The court may extend the 60-day period upon a further showing in camera that the Government has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery

in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

(5) Notwithstanding subsection (b), the Government may elect to pursue its claim through any alternate remedy available to the Government, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in such proceeding as such person would have had if the action had continued under this section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action under this section. For purposes of the preceding sentence, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of the United States, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

(d) Award to Qui Tam Plaintiff.—

(1) If the Government proceeds with an action brought by a person under subsection (b), such person shall, subject to the second sentence of this paragraph, receive at least 15 percent but not more than 25 percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. Where the action is one which the court finds to be based primarily on disclosures of specific information (other than information provided by the person

bringing the action) relating to allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government [2] Accounting Office report, hearing, audit, or investigation, or from the news media, the court may award such sums as it considers appropriate, but in no case more than 10 percent of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation. Any payment to a person under the first or second sentence of this paragraph shall be made from the proceeds. Any such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(2) If the Government does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than 25 percent and not more than 30 percent of the proceeds of the action or settlement and shall be paid out of such proceeds. Such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(3) Whether or not the Government proceeds with the action, if the court finds that the action was brought by a person who planned and

initiated the violation of section 3729 upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action which the person would otherwise receive under paragraph (1) or (2) of this subsection, taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from his or her role in the violation of section 3729, that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the United States to continue the action, represented by the Department of Justice.

(4) If the Government does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

(e) Certain Actions Barred.—

(1) No court shall have jurisdiction over an action brought by a former or present member of the armed forces under subsection (b) of this section against a member of the armed forces arising out of such person's service in the armed forces.

(2)

(A) No court shall have jurisdiction over an action brought under subsection (b) against a Member of Congress, a member of the judiciary, or a senior executive branch official if the action is based on evidence or information known to the Government when the action was brought.

(B) For purposes of this paragraph, "senior executive branch official" means any officer or employee listed in paragraphs (1) through (8) of section 13103(f) of title 5.

(3) In no event may a person bring an action under subsection (b) which is based upon allegations or transactions which are the subject of a civil suit or an administrative civil money penalty proceeding in which the Government is already a party.

(4)

(A) The court shall dismiss an action or claim under this section, unless opposed by the Government, if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed—

(i) in a Federal criminal, civil, or administrative hearing in which the Government or its agent is a party;

(ii) in a congressional, Government Accountability Office, or other Federal report, hearing, audit, or investigation; or

(iii) from the news media,

unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.

(B) For purposes of this paragraph, "original source" means an individual who either (i) prior to a public disclosure under subsection (e)(4)(a), has voluntarily disclosed to the Government the information on which allegations or transactions in a claim are based, or (2) who has [3] knowledge that is independent of and materially adds to the publicly disclosed allegations or transactions, and who has voluntarily provided the information to the Government before filing an action under this section.

(f) Government Not Liable for Certain Expenses.—

The Government is not liable for expenses which a person incurs in bringing an action under this section.

(g) Fees and Expenses to Prevailing Defendant.—

In civil actions brought under this section by the United States, the provisions of section 2412(d) of title 28 shall apply.

(h) Relief From Retaliatory Actions.—

(1) In general.—

Any employee, contractor, or agent shall be entitled to all relief necessary to make that

employee, contractor, or agent whole, if that employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, agent or associated others in furtherance of an action under this section or other efforts to stop 1 or more violations of this subchapter.

(2) Relief.—

Relief under paragraph (1) shall include reinstatement with the same seniority status that employee, contractor, or agent would have had but for the discrimination, 2 times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. An action under this subsection may be brought in the appropriate district court of the United States for the relief provided in this subsection.

(3) Limitation on bringing civil action.—

A civil action under this subsection may not be brought more than 3 years after the date when the retaliation occurred.

(Pub. L. 97–258, Sept. 13, 1982, 96 Stat. 978; Pub. L. 99–562, §§ 3, 4, Oct. 27, 1986, 100 Stat. 3154, 3157; Pub. L. 100–700, § 9, Nov. 19, 1988, 102 Stat. 4638; Pub. L. 101–280, § 10(a), May 4, 1990, 104 Stat. 162; Pub. L. 103–272, § 4(f)(1)(P), July 5, 1994, 108 Stat. 1362; Pub. L. 111–21, § 4(d), May 20, 2009, 123 Stat. 1624; Pub. L. 111–148, title X,

§ 10104(j)(2), Mar. 23, 2010, 124 Stat. 901; Pub. L. 111–203, title X, § 1079A(c), July 21, 2010, 124 Stat. 2079; Pub. L. 117–286, § 4(c)(36), Dec. 27, 2022, 136 Stat. 4358.)

31 U.S. CODE § 3731
False Claims Procedure

(a) A subpoena requiring the attendance of a witness at a trial or hearing conducted under section 3730 of this title may be served at any place in the United States.

(b) A civil action under section 3730 may not be brought—

(1) more than 6 years after the date on which the violation of section 3729 is committed, or

(2) more than 3 years after the date when facts material to the right of action are known or reasonably should have been known by the official of the United States charged with responsibility to act in the circumstances, but in no event more than 10 years after the date on which the violation is committed,

whichever occurs last.

(c) If the Government elects to intervene and proceed with an action brought under 3730(b),[1] the Government may file its own complaint or amend the complaint of a person who has brought an action under section 3730(b) to clarify or add detail to the claims in which the Government is intervening and to add any additional claims with respect to which the Government contends it is entitled to relief. For statute of limitations purposes, any such Government pleading shall relate back to the filing date of the complaint of the person who originally brought the action, to the extent that the claim of the Government arises out of the conduct, transactions, or

occurrences set forth, or attempted to be set forth, in the prior complaint of that person.

(d) In any action brought under section 3730, the United States shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

(e) Notwithstanding any other provision of law, the Federal Rules of Criminal Procedure, or the Federal Rules of Evidence, a final judgment rendered in favor of the United States in any criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, shall estop the defendant from denying the essential elements of the offense in any action which involves the same transaction as in the criminal proceeding and which is brought under subsection (a) or (b) of section 3730.

(Pub. L. 97–258, Sept. 13, 1982, 96 Stat. 979; Pub. L. 99–562, § 5, Oct. 27, 1986, 100 Stat. 3158; Pub. L. 111–21, § 4(b), May 20, 2009, 123 Stat. 1623.)

SETTLEMENT AGREEMENT (JUNE 13, 2022)

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the United States Army, defendants Kellogg Brown & Root, Inc., Kellogg Brown & Root Services, Inc., Kellogg Brown & Root, LLC, and Overseas Administration Services, Ltd., and Relator David Conyers, as the Representative of the Estate of Bud Conyers (hereafter collectively referred to as "the Parties"), through their authorized representatives.

RECITALS

A. In 2003, Defendant Kellogg Brown & Root, Services, Inc., headquartered in Houston, Texas, assumed responsibility for performing the Logistics Civil Augmentation Program (LOGCAP) III contract, which the Army awarded to a predecessor, Brown & Root Services, Inc., on December 14, 2001. Until December 31, 2005, Kellogg Brown & Root Services, Inc. was owned by defendant Kellogg Brown & Root, Inc. Defendant Kellogg Brown & Root, LLC was the successor to Kellogg Brown & Root, Inc. Defendant Overseas Administration Services, Ltd. was a company through which certain employees who performed work under the LOGCAP III contract were retained. Collectively, these defendants are referred to herein as "KBR."

B. The LOGCAP III contract required KBR to provide logistics support for United States military operations in contingency environments overseas, including in Iraq. LOGCAP III was an indefinite delivery, indefinite quantity (IDIQ) contract. All work under LOGCAP III was performed pursuant to separately awarded task orders, the vast majority of which were issued to KBR as cost-plus-award-fee task orders, including Task Orders 27, 36 and 43 (the "Task Orders"). Each Task Order contained specific requirements for whatever goods or services the Army directed KBR to provide. KBR would then voucher the United States for costs that it incurred in performing the required work, including its costs in paying local subcontractors.

C. On December 20, 2006, Bud Conyers filed a complaint in the United States District Court for the Southern District of Texas captioned *United States ex rel. Conyers v. Kellogg Brown & Root, Inc.*, Civ. No. 4:06-cv-04024, pursuant to the *qui tam* provision of the False Claims Act, 31 U.S.C. § 3730(b) (the "Civil Action"). The United States partially intervened in the Civil Action on May 10, 2013, and filed the United States' Complaint on January 6, 2014.

D. The United States contends that it has certain civil claims against KBR arising from work that KBR performed under the LOGCAP III contract during the period from November 2002 through January 2005, and for vouchers for payment that KBR submitted to the United States in connection with that work. In particular, the United States alleges the conduct described below, in subparagraphs D(1) through (6), which is identified in this Agreement as the "Covered Conduct."

1. In or around November 2002, a KBR employee ("Employee 1") solicited bids for a KBR subcontract to fulfill a Task Order 27 requirement for cleaning services at Camp Arifjan, an Army installation in Kuwait. Employee 1 rigged the bidding process for this subcontract, so as to justify awarding the subcontract (known as "Subcontract 11") to a Kuwaiti subcontractor named La Nouvelle Trading & Contracting Co. ("La Nouvelle"). As a reward for this favorable treatment, Employee 1 accepted several kickbacks from the managing partner of La Nouvelle. These kickbacks were included within the prices that KBR paid to La Nouvelle and for which it charged the United States under the LOGCAP III contract.

2. In or around February 2003, a second KBR employee ("Employee 2") solicited bids for a KBR subcontract to fulfill a Task Order 36 requirement for fuel tankers to store and dispense fuel at an Aerial Port of Debarkation ("APOD") in Kuwait. Employee 2 awarded the subcontract (known as "Subcontract 39") to La Nouvelle at an inflated price. To reward this favorable treatment, the managing partner of La Nouvelle paid Employee 2 a kickback, which was included within the price that KBR paid La Nouvelle and for which it charged the United States under the LOGCAP III contract.

3. In or around June 2003, a third KBR employee ("Employee 3") solicited bids for a KBR subcontract to fulfill a Task Order 43

requirement to provide trucks and refrigerated trailers (known as "reefers") to deliver perishable items into Iraq. Prior to soliciting bids for this subcontract, Employee 3 had entered into a kickback agreement with the managing partner of First Kuwaiti Trading Co. a/k/a First Kuwaiti Trading & Contracting Co. ("First Kuwaiti"), under which Employee 3 was to receive a kickback for any subcontract that he awarded to First Kuwaiti for the lease of trucks; the amount of this kickback was 50 Kuwaiti Dinar per truck for every month the truck was leased. Under the influence of this kickback arrangement, Employee 3 ultimately awarded the subcontract (known as "Subcontract 167") to First Kuwaiti, which was a high bidder, for the lease of 50 trucks and 50 reefers for a six-month period, when other bidders could have satisfied the Army's requirements for less money. The award price was inflated by the amount of Employee 3's kickback arrangement with the managing partner of First Kuwaiti. KBR paid the inflated price and charged the United States for its costs under the LOGCAP III contract.

4. After the six-month term of Subcontract 167 expired in December 2003, First Kuwaiti continued to submit monthly invoices to KBR for the lease of the trucks and refrigerated trailers. KBR conducted an inventory and determined that most of these vehicles had been returned to First Kuwaiti

in January 2004 and that it only owed First Kuwaiti approximately $177,000. Nevertheless, in or around January 2005, KBR paid First Kuwaiti more than $2.6 million for the continued lease of equipment that its employees knew First Kuwaiti had not provided, resulting in an additional overpayment to First Kuwaiti. KBR's employees also created records purporting to show that the payments were for the continued lease of the trucks and trailers that had been returned.

5. In or around July 2003, Employee 3 awarded a second subcontract (known as "Subcontract 190") to First Kuwaiti for the lease of 150 trucks to haul fuel trailers in support of Task Order 43. Employee 3 awarded to First Kuwaiti, which was a high bidder, pursuant to his kickback arrangement with the managing partner of First Kuwaiti, when other bidders could have satisfied the Army's contract requirements for less money. As was the case with Subcontract 167, the award price of Subcontract 190 also included the price of Employee 3's kickback arrangement with the managing partner of First Kuwaiti. KBR paid the inflated price and charged the United States for its costs under the LOGCAP III contract. Subcontract 190 was subsequently extended based on the inflated price at which it was awarded, which KBR also charged the United States for these costs.

6. Following the award of Subcontract 190, some of the trucks that were leased under the

subcontract were returned to First Kuwaiti. Nevertheless, First Kuwaiti continued to submit invoices for these trucks, which KBR paid and for which it charged the United States.

E. This Settlement Agreement is neither an admission of liability by KBR nor a concession by the United States that its claims are not well founded.

F. The Relator claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Settlement Agreement and to the Relator's reasonable expenses, attorneys' fees and costs. The Relator also has asserted personal claims against the Defendants (ECF 54).

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. As consideration for this Agreement, KBR shall pay the United States $13,677,621 ("Settlement Amount"), of which $4,253,174 is restitution. The Settlement Amount shall be satisfied by crediting to it $1,677,621 in contract credits that KBR provided previously to the United States in connection with Employee 3's conduct, and by an additional payment by KBR to the United States of the remaining $12,000,000, which amount KBR shall pay by electronic funds transfer no later than 10 days after the Effective Date of this Agreement pursuant to written instructions to be provided by the United States Department of Justice.

2. Subject to the exceptions in Paragraph 4 (concerning reserved claims) below, and upon the United States' receipt of the Settlement Amount, the United States releases KBR, together with its current and former parent corporations, direct and indirect subsidiaries, brother or sister corporations, divisions, current or former corporate owners, and the corporate successors and assigns of any of them from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; the Anti-Kickback Act, 41 U.S.C. §§ 8701-8707; the Contract Disputes Act, 41 U.S.C. §§ 7101-7109; or the common law theories of breach of contract, payment by mistake, unjust enrichment, and fraud.

3. Subject to the exceptions in Paragraph 4 below, and upon the United States' receipt of the Settlement Amount, the Relator, including any of the Relator's heirs, successors, attorneys, agents, and assigns, releases KBR, together with its current and former parent corporations, direct and indirect subsidiaries, brother or sister corporations, divisions, current or former corporate owners, and the corporate successors and assigns from any civil monetary claim the Relator has on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733.

4. Notwithstanding the releases given in Paragraph 2 of this Agreement, or any other term of this Agreement, the following claims and rights of the United States are specifically reserved and are not released:

a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);

b. Any criminal liability;

c. Except as explicitly stated in this Agreement, any administrative liability or enforcement right, or any administrative remedy, including the suspension and debarment rights of any federal agency;

d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;

e. Any liability based upon obligations created by this Agreement;

f. Any liability of individuals;

g. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;

h. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

5. The Relator and the Relator's heirs, successors, attorneys, agents, and assigns shall not object to this Agreement but agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). In connection with this Agreement and this Civil Action, the Relator and the Relator's heirs, successors, attorneys, agents, and assigns agree that neither this Agreement nor any dismissal of the Civil Action shall waive or otherwise affect the ability of the United

States to contend that provisions in the False Claims Act, including 31 U.S.C. §§ 3730(d)(3) and 3730(e), bar the Relator from sharing in the proceeds of this Agreement. Moreover, the United States and the Relator, and his heirs, successors, attorneys, agents, and assigns, agree that they each retain all of their rights pursuant to the False Claims Act on the issue of the share percentage, if any, that the Relator should receive of any proceeds of the settlement of his claim(s), and that no agreements concerning the Relator share have been reached to date.

6. The Relator, for himself, and for his heirs, successors, attorneys, agents, and assigns, releases KBR, together with its current and former parent corporations, direct and indirect subsidiaries, brother or sister corporations, divisions, current or former corporate owners, and the corporate successors and assigns of any of them, and their officers, agents, and employees, from any liability to the Relator arising from the filing of the Civil Action, however, the Relator does not release KBR from any claim under 31 U.S.C. § 3730(d) for expenses or attorneys' fees and costs or from the First and Second Personal Claims he pleaded in his First Amended Complaint (ECF 54).

7. KBR waives and shall not assert any defenses it may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action.

8. KBR fully and finally releases the United States, including its agencies, officers, agents, employees, and servants, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that KBR has asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct or the United States' investigation or prosecution thereof.

9. KBR fully and finally releases the Relator from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that KBR has asserted, could have asserted, or may assert in the future against the Relator, related to the Covered Conduct and the Relator's investigation and prosecution thereof.

10. a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of KBR, together with its current and former parent corporations, direct and indirect subsidiaries, brother or sister corporations, divisions, current or former corporate owners, and the corporate successors and assigns of any of them, and its present or former officers, directors, employees, shareholders, and agents in connection with:

(1) the matters covered by this Agreement;

(2) the United States' audit(s) and civil and criminal investigation(s) of the matters covered by this Agreement;

(3) KBR's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil and criminal inves-

tigation(s) in connection with the matters covered by this Agreement (including attorneys' fees);

(4) the negotiation and performance of this Agreement;

(5) the payment KBR makes to the United States pursuant to this Agreement, the credits referenced in Paragraph 1 and any payments that KBR may make to Relator, including costs and attorneys' fees,

are unallowable costs for government contracting purposes (hereinafter referred to as "Unallowable Costs").

b. Future Treatment of Unallowable Costs: Unallowable Costs will be separately determined and accounted for by KBR, and KBR shall not charge such Unallowable Costs directly or indirectly to any contract with the United States.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Agreement, KBR shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by KBR or any of its subsidiaries or affiliates from the United States. KBR agrees that the United States, at a minimum, shall be entitled to recoup from KBR any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted requests for payment. The United States, including the Department of Justice and/or the affected agencies, reserves its rights to audit, examine, or reexamine KBR's books and records and to disagree with any calculations submitted by KBR or any of its

subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by KBR, or the effect of any such Unallowable Costs on the amount of such payments.

11. This Agreement is intended to be for the benefit of the Parties only.

12. Upon receipt of the payment described in Paragraph 1, above, the Parties shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action pursuant to Rule 41(a)(1). The stipulation of dismissal shall state that the Civil Action is being dismissed subject to the terms of this Agreement, and that the Court retains jurisdiction over the parties to the extent necessary to enforce the terms and conditions of the Agreement. The stipulation shall further state that the action is being dismissed with prejudice to the United States only as to the Covered Conduct released in this Agreement, and without prejudice to the United States as to any other claims in the Civil Action, and with prejudice to Relator for any claim that Relator has asserted on behalf of the United States, and without prejudice to any appeal Relator may file related to the Court's March 30, 2015 dismissal (ECF 85) of the First and Second Personal Claims he asserted in his First Amended Complaint (ECF 54).

13. Except as set forth in Paragraph 6, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

14. Each Party and signatory to this Agreement represents that it freely and voluntarily enters into

this Agreement without any degree of duress or compulsion.

15. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the Southern District of Texas. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

16. This Agreement constitutes the complete agreement between the Parties as to its terms. This Agreement may not be amended except by written consent of the Parties.

17. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

18. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

19. This Agreement is binding on KBR's successors, transferees, heirs, and assigns.

20. This Agreement is binding on the Relator's successors, transferees, heirs, and assigns.

21. All parties consent to the disclosure of this Agreement, and information about this Agreement, to the public.

22. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures and copies of signatures in pdf shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

BY:

/s/ David W. Tyler
Senior Trial Counsel
Commercial Litigation Branch
Civil Division
United States Department of Justice

Dated: 6-13-2022

KBR, INC. ON BEHALF OF KELLOGG BROWN & ROOT, INC., KELLOGG BROWN & ROOT SERVICES, INC., KELLOGG BROWN & ROOT, LLC, AND OVERSEAS ADMINISTRATION SERVICES, LTD.

BY:

/s/ Sonia Galindo

Executive Vice President and General Counsel, KBR, Inc.

Dated: June 9, 2022

BY:

/s/ Craig D. Margolis

Counsel for KBR, Inc., Kellogg Brown & Root, Inc., Kellogg Brown & Root Services, Inc., Kellogg Brown & Root, LLC and Overseas Administration Services, Ltd.

Dated: June 10, 2022

RELATOR ESTATE OF BUD CONYERS,
BY AND THROUGH ITS PERSONAL
REPRESENTATIVE DAVID CONYERS

BY:

/s/ David Conyers
as personal representative of the Estate of Bud Conyers

Dated: 06/12/2022

BY:

/s/ Alan M. Grayson
Counsel for David Conyers, as personal representative of the Estate of Bud Conyers

RELATOR ESTATE OF BUD CONYERS,
BY AND THROUGH ITS PERSONAL
REPRESENTATIVE DAVID CONYERS

BY:

/s/ David Conyers
as personal representative of the Estate of Bud Conyers

BY:

/s/ Alan M. Grayson
Counsel for David Conyers, as personal representative of the Estate of Bud Conyers

Dated: 6/13/22

RELATOR'S FIRST AMENDED COMPLAINT (JANUARY 8, 2014)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

UNITED STATES *ex rel.* CONYERS,

Plaintiff/Relator,

v.

HALLIBURTON CO., ET AL.,

Defendants.

Case No.: 12-cv-04095 (SLD/JAG)

RELATOR'S FIRST AMENDED COMPLAINT

1. This is an action under the False Claims Act, 31 U.S.C. §§ 3729 *et seq*., regarding the Defendants' submission of false claims to the U.S. Army (the "Army"), Relator Bud Conyers' efforts to investigate and stop the Defendants' fraudulent conduct and his refusal to participate in it, and the Defendants resulting retaliation against Mr. Conyers.[1]

[1] This Amended Complaint is one of two being filed pursuant to the Court's October 14, 2013 Order. Relator Bud Conyers' original complaint in this action was filed on or about December 20, 2006. Under the October 14, 2013 Order, Relator is to file an amended complaint concerning his personal claims asserted in the original complaint; and the United States is to file a separate amended

2. The Defendants received an Army contract to provide troop support in Iraq (the "LogCAP Contract, or "LogCAP"). Among other things, they are believed to have:

- used morgue tracks that contained decayed human remains to store and transport ice to U.S. soldiers (ice which was used in refreshments);
- taken kickbacks from vehicle suppliers; and
- hired prostitutes as staff, and billed the expense to the Army.

3. Relator Bud Conyers was a civilian truck driver working under the LogCAP Contract. He developed knowledge of the information on which these allegations are based. Defendants' actions grossly violated the terms of the LogCAP Contract, and other applicable law. Their resulting claims for payment to the Army were false and fraudulent. The Relator complained to Defendants repeatedly about their failure to abide by health and safety standards, in particular regarding transporting, in morgue trucks, ice that was consumed by the troops. Conyers suffered in the terms and conditions of his employment as a result of his investigation of this fraud and refusal to participate in the fraud. The Defendants harassed him, stopped paying him, and then terminated his employment.

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complaint concerning matters in the original complaint with respect to which the United States has intervened. Relator reserves all of his rights with respect to the intervened matters and the United States' amended complaint, including all of his rights under 31 U.S.C. § 3730.

PARTIES

4. Relator Bud Conyers ("Conyers") is a citizen of the United States, now domiciled in Enid, Oklahoma. He served in the U.S. Army from 1987 to 1989, and then went to school on the G.I. Bill. He drove trucks from 1994 until 2005. Hoping to help the war effort in lraq, he joined Defendants in 2003 as a truck driver and convoy commander.

5. Defendant Halliburton Company ("Halliburton") is a publicly-traded company incorporated in Delaware. It wholly owns all business entities known as Kellogg Brown and Root or KBR, and did so before, during and after their reorganization under Chapter 11. Halliburton's principal places of business are Suite 200, 1150 18th St., N.W., Washington, D.C. 20036 and 5 Houston Center, 1401 McKinney, Houston, Texas 77010.

6. Defendant Kellogg Brown & Root, Inc. ("KBR Inc.") and Defendant Kellogg, Brown & Root Services, Inc. ("KBR Services") are contractors under the LogCAP Contract, as explained further below. Their address is 5 Houston Center, 1401 McKinney, Houston, Texas 77010. KBR Inc. and KBR Services employ approximately 60% of Halliburton's total staff. Collectively, Halliburton, KBR Inc. and KBR Services are referred to as the Defendants. Together, KBR Inc. and KBR Services are referred to as KBR.

JURISDICTION AND VENUE

7. This action arises under 31 U.S.C. §§ 3729 *et seq*. Therefore, this is a case or controversy arising under the laws of the United States. Hence the Court has jurisdiction under 28 U.S.C. § 1331 (2000). The

Court has jurisdiction over Relator's state law claim under 28 U.S.C. § 1367.

8. This action may be brought in this judicial district under 31 U.S.C. § 3732(a) (2000) because, *inter alia,* one or more of the Defendants can be found or transacts business in this judicial district, and one or more of the acts prescribed by *id. §* 3729 occurred in this judicial district.

ALLEGATIONS

9. In 2001, the U.S. Army Corps of Engineers awarded a 10-year contract to KBR under the U.S. Army's Logistics Civil Augmentation Program. This is the LogCAP Contract.

10. The U.S. Army Field Support Command ("FSC") administers the LogCAP Contract. FSC is headquartered in Rock Island, IL Arsenal, Rock Island, IL 61229-6000.

11. LogCAP is Contract No. DAAA09-02-D-0007. "DAAA09" is a prefix referring to the FSC office in Rock Island. LogCAP is a 10-year Task Order contract that calls for the contractor to provide a wide range of logistical services to the U.S. Army, including billeting, food, power, waste management, transport, and water and ice.

12. On information and belief, LogCAP was awarded to Kellogg Brown & Root Services, then an unincorporated division of Defendant KBR Inc., and later transferred to Defendant KBR Services.

13. Defendants KBR Inc. and KBR Services have submitted LogCAP claims to U.S. Government employees at FSC (and other locations) that FSC received

within this judicial district. Defendant Halliburton caused such claims to be submitted. For the reasons stated above and below, these claims were false and fraudulent.

14. In 2003, Relator Bud Conyers went to work in Kuwait and Iraq for KBR, so that he could earn money for his family, and help his country in the war effort.

15. Conyers worked for KBR's Theater Transportation Mission, which provides transportation in support of the U.S. forces in Kuwait and Iraq. He worked as a truck driver and convoy commander. Despite exhaustive searches, Relator does not have access to the LogCAP III Contract Task Orders that encompass the Theater Transportation Mission because they are in the exclusive possession and control of Defendants.

I. Ice Consumed by U.S. Troops Delivered in Morgue Trailers

16. In March 2003, soldiers from the U.S. Army's 54th Quartermaster Company (the "54th"), of Fort Lee, VA, comprised the Army's only active duty Mortuary Affairs unit. That month, when the U.S. occupation of Iraq began, the 54th deployed to Kuwait, Iraq and Afghanistan.

17. When the 54th arrived in the combat theater, two teams branched off to support combat divisions heading toward Baghdad, Iraq. Both teams also established temporary internment cemeteries for deceased Iraqis.

18. After U.S. forces occupied Baghdad in April 2003, the teams from the 54th remained in the area. They assisted in the recovery of human remains from battle. The teams from the 54th employed refrigerated

trailers to transport remains to burial sites. Refrigerated vehicles, whether for this purpose or for other purposes, were known as "reefers."

19. The proper disposal of human remains is a very serious matter, not only for cultural and religious reasons, but also for reasons of health and safety. According to the U.S. Army Center for Health Promotion and Preventive Medicine's Technical Guide:

> Contact with whole or part human remains carries potential risks associated with pathogenic microbiological organisms that may be present in human blood and tissue. Infectious conditions and pathogens in the recently deceased include-
>
> - bloodborne pathogens such as hepatitis B virus (HBV), hepatitis D virus (HDV), hepatitis E virus (HEV), and human immunodeficiency Virus (HIV);
> - tuberculosis;
> - group A streptococcal infection;
> - gastrointestinal organisms;
> - agents that cause transmissible spongiform encephalopathies such as Creutz Jakob disease; and
> - possibly meningitis and septicemia (especially meningococcal).
>
> ****
>
> The primary ways to protect personnel who handle human remains against infectious diseases are-

- use of appropriate personal protective equipment,
- observance of safety, industrial hygiene, and infection control practices described in this TG [Technical Guide].

"Guidelines for Protecting Mortuary Affairs Personnel from Potentially Infectious Material," TG 195 (October 2001).

20. The Army and the U.S. Department of Defense have promulgated numerous rules regarding health and safety. Many of these rules were incorporated in the LogCAP Contract, and were binding on the Defendants. Under these health and safety rules, the Defendants were not permitted to use mortuary trailers that had transported human remains to deliver supplies to U.S. troops. This included trailers that the teams from the 54th had employed.

21. Halliburton's "Code of Business Conduct: Health, Safety and Environment,"-which the Board of Directors approved on May 21, 2003, and which explicitly applies to KBR-states:

> The Company will comply with all applicable Laws and relevant industry standards of practice concerning protection of health and safety of its Employees. . . . Protection of health [and] safety . . . is a primary goal of the Company and the management of the Company shall take such actions as are reasonable and necessary to achieve such goal and carry out this Policy.

22. The Defendants disregarded applicable health and safety rules by hiring and using mortuary trailers

to deliver supplies to U.S. troops, and submitting claims under the LogCAP Contract for the cost of such to the Army. As a result, those claims were false and fraudulent.

23. In addition, the Defendants followed none of the applicable rules regarding the protection of personnel exposed to human remains. Nor did KBR follow applicable rules governing the disinfection of vehicles or equipment containing such remains.

24. Conyers discovered the Defendants' misuse of mortuary trailers in a particularly unpleasant manner. On or about June 16, 2003, while working under the LogCAP Contract, he observed LogCAP convoy commander Wallace Wynia, David Milk and a half-dozen other LogCAP drivers working to repair the engine of a truck – "reefer" [refrigerated] Trailer R-89-that had been inoperative for two weeks.

25. After about six hours of work, they got the engine running. They then wanted to check the trailer, to make sure the cooling unit worked. They opened the trailer door to a gruesome discovery. They found 15 dead Iraqis in various stages of decomposition. The bodies had been rotting in heat in excess of 120°, for approximately two weeks.

26. Since this vehicle was a morgue trailer, the Defendants were supposed to send it to an Army base in Kuwait, for continued use as such. Instead, the morgue trailer went to a Public Warehousing Company ("PWC) facility, for use by the Defendants under the LogCAP Contract – specifically, to deliver ice to U.S. troops.

27. As noted above, under the LogCAP Contract, KBR delivered various supplies to Army bases and

other U.S. facilities in Iraq. Among these supplies is ice made from drinking water. U.S. troops in Iraq consume such ice in large quantities, to cool beverages. KBR uses "reefer" vehicles to keep this ice frozen as it is delivered to U.S. facilities in Iraq. This is sometimes referred to as "potable ice" or "edible ice," although of course it is no longer potable or edible after being transported in a morgue trailer.

28. In the case of Trailer R-89, an Army mortuary team unloaded the Iraqi bodies at the PWC facility. A KBR foreman ordered Trailer R-89 to an "ice center," where it was loaded with "potable" ice. Trailer R-89 then delivered that ice for consumption by U.S. soldiers. After this run, KBR kept the contaminated trailer in circulation for various cargo, including more "potable" ice.

29. KBR's Project Manager and Deputy Project Manager covered up the Trailer R-89 incident. Earlier, two KBR employees had been injured while joy-riding a Blackhawk helicopter. Wynia and convoy commander Jeff Allen did not want those employees fined, and wanted KBR to pay the employees (at taxpayer expense) during their recovery. On information and belief, Wynia and Allen made a deal with two KBR supervisors, Ely and Ducksbury, and the drivers that they would not tell anyone about KBR's practice of transporting "potable" ice on morgue trucks if KBR would retain and pay those two injured employees during their recovery. Conyers overheard Ely and Wynia discussing this deal when Conyers and other witnesses to the Trailer R-89 incident were called to Wynia's office.

30. The Trailer R-89 incident was far from isolated. Conyers tried to stop the Defendants and their

suppliers from loading "potable" ice onto morgue trucks at least six times after the grisly June 2003 incident.

31. More than two months after the initial incident, as reported in Allen's August 31 mission log, Trailer R-89 was still being used to transport "potable" ice. Of the 5,000 pounds loaded onto the trailer, "approx. 1,800 pounds" of the "biocontaminated ice" was" used," according to a signed note written in a log.

32. Conyers repeatedly filed complaints with KBR's Internal Affairs Office, but the awful practice continued. Conyers and a colleague even took pictures to substantiate what was happening. Conyers' boss found out, got angry with Conyers, and confiscated the pictures (but not the negatives).

33. The claims that the Defendants submitted under the LogCAP contract for the transportation of items in refrigerated vehicle were false or fraudulent, because the Defendants certified compliance with applicable rules and contract provisions, but *(inter alia)* KBR did not comply with the rules forbidding the use of mortuary trucks to deliver other items, the rules governing the protection of persons exposed to human remains, and the rules governing cleaning and cleanliness of vehicles and equipment.

II. Kickbacks on Trucks

34. Conyers discovered that one of Conyers' first bosses, Willie Dawson, took kickbacks from leasing companies for trucks, trailers and equipment. To add insult to injury, Dawson was taking the kickbacks regardless of whether these items worked.

35. For example, KBR had a fleet of around 200 "reefer" trailers to transport food and ice, but only around 50 ever worked. KBR submitted claims to the Army for all 200, however, so that Dawson and others could receive their kickbacks on all 200.

36. This resulted in false and fraudulent claims to the Government, for several reasons. *Inter alia, the* cost of the kickback was incorporated in the leasing company's bill to KBR, and KBR's bill to the Government. In addition, because of the billing for the inoperative vehicles, the leasing companies billed approximately four times as much as the bill would have been for operative vehicles, and this, in turn, increased KBR's bill to the Government. Moreover, this arrangement caused unnecessary repair bills to be submitted to the Government. Furthermore, the resulting inefficiency meant that the overall cost of the mission was increased.

37. Conyers complained to his immediate foreman and then to the local leasing company about these kickbacks. The local leasing company manager offered Conyers the same deal that Conyers' KBR supervisor was getting: "a kickback on all equipment that hits the ground, good or bad."

38. Conyers rejected the bribe.

39. Rob Nuble was another KBR employee taking kickbacks of this kind. At Camp Anaconda, Nuble took kickbacks from the supplier of flatbed trucks billed for use there. Nuble came up with a new twist – he charged the Army for more trucks than were really delivered to Camp Anaconda, and took kickbacks on the phantom trucks. Nuble actually bragged about this to Conyers.

40. Conyers filed complaints about the kickbacks with KBR's Internal Affairs Office. Nothing changed.

III. Prostitution Billed to the U.S. Government

41. Conyers initially was assigned to work for KBR in Kuwait. In Kuwait, Conyers observed that women from Bosnia and Kosovo who worked for KBR served as prostitutes for male KBR managers. Conyers learned that the managers had hired these women as LogCAP employees, billing their salaries to the Army under the LogCAP Contract. The women did little if any actual work under LogCAP, however. Their primary function was simply to service the KBR managers. KBR even paid for their hotel rooms. Conyers reported this to KBR's Internal Affairs Office, again to no effect.

42. Needless to say, providing prostitution services to KBR management is not authorized under the LogCAP Contract. The employment of prostitutes, at taxpayer expense, inflated the bills that the Defendants submitted under the LogCAP Contract to U.S. Government employees.

IV. Retaliation

43. Despite threats from his supervisor, Conyers repeatedly filed complaints to KBR's Internal Affairs Office.

44. On October 24, 2003, Conyers told Jim Coin, KBR's Employee Relations manager for LogCAP, about yet another morgue trailer having a dead body in it (this one at Cedar II). Conyers was relieved of his LogCAP duties the next day.

45. KBR stopped paying Conyers. In fact, he did not receive any of his salary after August 2003. When he complained to a supervisor, he was told that this is what happens when you are not a "team player."

46. KBR did not reimburse Conyers for the $4000 replacement prosthesis that Conyers had to buy when his artificial leg was broken on the job in Iraq. He also lost all of his personal belongings in Camp Anaconda, including, his clothes, his replacement artificial leg, and holiday presents for his family.

47. KBR fired him on December 28, 2003, ostensibly for "failure to remain at his post" in Safir al-Dana.

48. Conyers reported the incidents to the Army's Criminal Investigative Division in Kuwait.

RELATOR'S FIRST PERSONAL CLAIM:
RETALIATION (FCA § 3730(H))

49. All of the preceding allegations are incorporated herein.

50. Defendants controlled the terms, conditions and conduct of Conyers' employment.

51. KBR billed the Government under the LogCAP Contract each month. Each of these LogCAP claims relating to the shipping of edible ice in morgue trailers, taking kickbacks on trucks and billing for more working trucks than there were, and billing prostitutes as personnel, beginning no later than 2003 and continued during the pendency of this lawsuit, is a false or fraudulent claim, for the reasons alleged above. Halliburton caused such false and fraudulent claims to be submitted.

52. The Defendants also knowingly made, used or caused to be made or used numerous false records or statements to get the false or fraudulent claims paid or approved. For instance, Defendants made false statements regarding the source of reefer trailers, the actual cost of reefer trailers, and the number of reefer trailers in use.

53. Relator Conyers was an employee discharged, demoted, suspended, threatened, harassed, and in other manners discriminated against in the terms and conditions of employment by his employer because of lawful acts done by the Conyers in furtherance of an action under the False Claims Act. This included his investigation for this action and his refusal to participate in the fraud.

WHEREFORE, for this claim, Relator Conyers requests the following relief from each of the Defendants, jointly and severally:

A. All relief necessary to make the Relator whole;

B. An Order providing for reinstatement with the same seniority status that the Relator would have had but for the discrimination, or in the alternative, front pay;

C. Two times the amount of back pay and front pay;

D. Interest on the back pay and front pay;

E. Compensation for special damages sustained as a result of the retaliation, including but not limited to litigation costs, reasonable attorneys' fees and emotional distress damages;

F. Pre-judgment and post-judgment interest; and

G. Such further relief as the Court deems just.

RELATOR'S SECOND PERSONAL CLAIM:
(BREACH OF CONTRACT)

54. All of the preceding allegations are incorporated herein.

55. KBR entered into an employment contract with Conyers. There was adequate consideration for the contract.

56. Conyers performed under the contract.

57. KBR breached the employment contract by terminating it prematurely and unlawfully.

58. KBR's actions were without lawful cause or justification.

59. KBR's breach of the contract caused and continues to cause Conyers harm, *i.e.,* the loss of the money due to and expected by Conyers under the natural term of his employment.

WHEREFORE, for this claim, Relator Conyers requests the following relief from each of the Defendants, jointly and severally:

A. All relief necessary to make the Relator whole;

B. An order providing for reinstatement with the same seniority status that the Relator would have had but for the discrimination, or in the alternative, front pay;

C. Back pay;

D. Interest on the back pay and front pay;

E. Pre-judgment and post-judgment interest; and

F. Such further relief as the Court deems just.

JURY REQUEST

Relator requests a jury for all issues that may be tried by a jury.

Date: January 6, 2014

Respectfully submitted

LAW OFFICE OF VICTOR A. KUBLI P.C.

By: /s/ V.A. Kubli

Victor A. Kubli, Esq.
13948 Bromfield Road
Germantown, Maryland 20874
Ph: (301) 801-2330
E-mail: Kubli@kublilaw.com

Counsel for Relator

COMPLAINT OF THE UNITED STATES OF AMERICA (JANUARY 8, 2014)

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
ROCK ISLAND DIVISION

UNITED STATES *ex rel.* CONYERS,

Plaintiffs,

v.

KELLOGG, BROWN & ROOT, INC.; KELLOGG BROWN & ROOT SERVICES, INC.; KELLOGG BROWN & ROOT LLC; OVERSEAS ADMINISTRATION SERVICES, LTD; LA NOUVELLE GENERAL TRADING & CONTRACTING COMPANY; LA NOUVELLE GENERAL TRADING & CONTRACTING COMPANY, WLL; LA NOUVELLE GENERAL TRADING & CONTRACTING CORP.; LA NOUVELLE GENERAL TRADING AND CONSTRUCTION CORP.; FIRST KUWAITI TRADING COMPANY; FIRST KUWAITI TRADING AND CONTRACTING; FIRST KUWAITI GENERAL TRADING & CONTRACTING COMPANY; FIRST KUWAITI GENERAL TRADING & CONTRACTING COMPANY, WLL; and FIRST KUWAITI TRADING & CONTRACTING, WLL,

Defendants.

Civil Action No. 4:12-cv-04095-SLD-JAG

COMPLAINT OF THE UNITED STATES OF AMERICA

The United States of America brings this action against the defendants, prime contractor Kellogg Brown & Root Services, Inc. (KBR) and subcontractors La Nouvelle and First Kuwaiti, for engaging in kickbacks and knowingly submitting, or causing to be submitted, false or fraudulent claims for payment under a contract between the United States Army and KBR for logistical support in the military theater (LOGCAP III). The United States asserts that this conduct gives rise to claims against KBR, La Nouvelle, and First Kuwaiti under the Anti-Kickback Act, 41 U.S.C. §§ 53 and 55 (now codified at 41 U.S.C. §§ 8702 and 8706), the False Claims Act, 31 U.S.C. § 3729, and at common law.

JURISDICTION AND VENUE

1. Subject matter jurisdiction is conferred on this Court by 31 U.S.C. §§ 1331 and 1345.

2. The Court has personal jurisdiction over the defendants because the defendants transact or transacted business in the United States and one or more of the acts proscribed by 31 U.S.C. § 3729 occurred in the United States.

4. Venue is proper in this district under 28 U.S.C. § 1391(c) and 31 U.S.C. § 3732(a) because defendant KBR is doing business in this district, defendants First Kuwaiti and La Nouvelle did business in this

district, and at least one of the acts proscribed by 31 U.S.C. § 3729 occurred in this district.

THE PARTIES

5. Plaintiff is the United States of America.

6. The defendants identified in this paragraph are referred to collectively as KBR:

(a) The Army awarded the LOGCAP III contract to Brown & Root Services, a division of defendant Kellogg Brown & Root, Inc., in December 2001. At the time, Kellogg Brown & Root, Inc. was owned by Halliburton Company (Halliburton), which guaranteed performance of LOGCAP III. On December 14, 2003, responsibility for LOGCAP III was transferred to defendant Kellogg Brown & Root Services, Inc., also owned by Halliburton. In April 2007, Halliburton spun-off its KBR subsidiaries, as KBR, Inc., a publicly-traded stock company.

As discussed in the allegations below, the acts attributed to KBR before December 14, 2003, were committed by Kellogg Brown & Root, Inc. and its agents; the acts attributed to KBR on or after that date were committed by Kellogg Brown & Root Services, Inc. and its agents.

(b) Defendant Kellogg Brown & Root LLC, successor to Kellogg Brown & Root, Inc., is a Delaware corporation with its principal office and place of business located at 601 Jefferson Street, Houston, Texas 77002, and its registered agent for service is CT Corpo-

ration System, 350 N. St. Paul Street, Suite 2900, Dallas Texas 75201. At all times relevant to this complaint, Kellogg Brown & Root LLC owned Kellogg Brown & Root Services, Inc.; Brown and Root Services, a division of Kellogg, Brown & Root International, Inc.; and predecessor or successor related corporations.

(c) Defendant Overseas Administration Services, Ltd (OAS) employed most of KBR's administrators working on LOGCAP III in Iraq and Kuwait at all times relevant to this complaint. On information and belief, OAS was incorporated in the Cayman Islands and is headquartered in Dubai, and is a foreign, wholly-owned subsidiary of defendant Kellogg Brown & Root LLC. KBR Technical Services, Inc. is a domestic subsidiary of Kellogg Brown & Root LLC and recruited and trained employees for OAS. During the time relevant to this complaint up to April 2007, the employees of OAS and other defendant KBR entities were trained using the same personnel and procedure manuals, received employment benefits through the same human resources office, and used the same email network.

7. The defendants identified in this paragraph are referred to collectively as La Nouvelle: KBR awarded La Nouvelle multiple subcontracts under LOGCAP III for the delivery of goods and services to support the United States military in Iraq and Kuwait. La Nouvelle General Trading & Contracting Company, La Nouvelle General Trading & Contracting Company,

WLL, La Nouvelle General Trading & Contracting Corp., and La Nouvelle General Trading and Construction Corp., all named as defendants, were various names used by La Nouvelle and Managing Partner Ali Hijazi (Hijazi) on documents relating to the La Nouvelle subcontracts. On information and belief, La Nouvelle's and Hijazi's principal place of business is Omar Ibn Al Khatab Street, Al Shawafat, Bldg Block 5, Floor 5, P.O. Box 20744, Safat 13068, Kuwait.[1]

8. The defendants identified in this paragraph are referred to collectively as First Kuwaiti: KBR awarded defendant First Kuwaiti multiple subcontracts under LOGCAP III for the delivery of goods and services to support the United States military in Iraq and Kuwait. First Kuwaiti Trading Company, First Kuwaiti Trading and Contracting, First Kuwaiti General Trading & Contracting Company, First Kuwaiti General Trading & Contracting Company, WLL, First Kuwaiti Trading & Contracting, WLL, all named as defendants, were various names used by First Kuwaiti and General Manager Wadih Al-Absi (Al-Absi) on documents relating to the First Kuwaiti subcontracts. On information and belief, First Kuwaiti's and Al-Absi's principal place of business is Sharq, Ahmed Al-Jaber Street, Al-Jas Tower, 8th floor, Kuwait City, Kuwait.

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[1] This is the post office box address listed on La Nouvelle's website. Some contract documents list the address as Safat 93151 or Emad Abdul Salam, P.O. Box 919, Safat 13010.

FACTUAL ALLEGATIONS

I. The LOGCAP III Contract

9. On December 14, 2001, the Army awarded contract number DAAA09-02-D-0007, known as LOGCAP III, to Brown and Root Services, a division of Kellogg Brown & Root, Inc. LOGCAP III is the third generation of contracts under the Army's Logistics Civil Augmentation Program for the provision of logistical support in the military theater. Support services include transportation, facilities management, maintenance, dining, and living accommodations for the troops.

10. LOGCAP III is an umbrella contract for an indefinite delivery of an indefinite quantity of services, known as an IDIQ contract. IDIQ contracts operate through task orders, each of which prescribes a specific scope of work.

11. LOGCAP III is a cost reimbursable contract. The contract obligated the Government to pay KBR for its allowable costs of providing the services required under the task orders, plus a one percent base fee and a discretionary award fee of up to two percent.

12. KBR performed a significant portion of its obligations under LOGCAP III through subcontractors. These subcontractors invoiced KBR for the services they provided under their subcontracts. KBR, in turn, vouchered the Government for its costs under the subcontracts, plus administrative costs and fees. A Government official certified the vouchers as "correct and proper for payment" based on KBR's representations. See FAR 53.301-1034.

II. Governing Regulations, Contract Terms, and Defense Department-Approved KBR Procedures to Ensure the Integrity of the Subcontracting Process

A. Provisions Intended to Ensure That the United States Is Charged Only for KBR's Reasonable Costs

13. The Government's acquisition of goods and services is governed by the Federal Acquisition Regulation (FAR) (codified at Title 48 of the Code of Federal Regulations), the applicable provisions of which, including the FAR's cost principles, were incorporated into LOGCAP III.

14. Under the FAR and the contract, KBR was entitled to reimbursement for its allowable costs. To be allowable, a cost must be incurred, reasonable, allocable to the contract, and not otherwise unallowable under applicable statutes and regulations. FAR 31.201-2.

15. A cost is reasonable "if . . . it does not exceed that which would be incurred by a prudent person in the conduct of competitive business." FAR 31.201-3. Reasonableness depends on a "variety of considerations and circumstances," but generally includes the contractor's (a) adherence to sound business practices, (b) commitment to arm's length bargaining, (c) attention to its responsibilities to the Government, and (d) adherence to its own established practices. *Id.*

16. Under the FAR, KBR had a duty, when awarding subcontracts for LOGCAP III work, to "[c]onduct appropriate cost or price reasonableness

analyses to establish the reasonableness of proposed subcontract prices." FAR 15.404-3(b)(1).

17. The two preferred methods for ensuring the reasonableness of subcontract prices are adequate price competition and comparison of the price with previous prices for the same or similar items. FAR 14.404-1(b)(2)(i) and (ii), and (b)(3). In fact, the FAR (and LOGCAP III) required KBR to award subcontracts on a competitive basis "to the maximum practical extent." FAR 52.244-5.

18. During the relevant time period, KBR maintained a Government Procurement Procedures Manual (Oct. 1993 ed.) (Manual) "to facilitate the implementation of the [FAR] in the federal government procurement actions of Brown & Root, Inc. . . . The manual reflects the intent of applicable public laws and statutes and good business practices in the acquisition process. . . . " Manual, Introduction, p. 1.

19. The procedures set forth in the Manual are approved by the Department of Defense. The Department of Defense relied on KBR to follow these procedures in procurement actions undertaken in support of Government contracts, including LOGCAP III. *See* FAR Part 44; FAR 52.244-2.

21. The Manual mandated the use of a Material Requisition to identify specific requirements, plus a defined statement of work, cost estimate, and other procurement planning documents as standard procedure at the beginning of the procurement process. Manual, Part II-1, p. 1.

22. The Material Requisition was the first step to a sound procurement action and, with limited excep-

tion, had to be completed and approved before soliciting bids for a subcontract. Manual, Part II-2, p. 1.

23. A Material Requisition was required even for emergency acquisitions. *Id*.

24. If the purchase exceeded $2,500, the Manual mandated that subcontract administrators use competitive bidding to ensure that it was advantageous to the Government. Manual, Part II-4, p. 7.

25. The Manual also provided that awarding a subcontract without competition should be the exception, Manual, Part II-2, p. 4, and mandated competition even for priority acquisitions, Manual, Part II-1, p. 2.

26. The Manual made clear that awarding a subcontract without competition to a single source, a practice called "sole sourcing," was appropriate only when no competition was available. To sole source a subcontract, the KBR employee requisitioning the services had to justify the sole source purchase in writing and have it approved by the project manager *before* awarding the subcontract. Manual, Part II-2, p. 4; Part II-4, p. 7.

27. The Manual required subcontract administrators to obtain the signature of a KBR official higher in the management chain if the dollar amount of a subcontract exceeded his or her authority. The Manual made clear that the level of authority necessary for a change order to a subcontract depended on the total revised value of the subcontract, not on the change order alone. Manual, Part I-7, p. 1.

28. The Manual also prescribed the process for paying invoices. The subcontract administrator was instructed (a) to verify that each invoice was for work

within the scope of a signed subcontract at the agreed price, (b) to resolve any significant errors discovered in the process, and (c) to then forward the invoice to the appropriate official for approval and payment. The subcontract administrator was also responsible for seeing that a copy of the invoice and any backup documents were inserted in the subcontract file. Manual, Part IV-4, p. 2.

B. Provision Prohibiting Kickbacks

29. In addition to provisions on reasonable cost, LOGCAP III also incorporated FAR 52.203-7, entitled "Anti-Kickback Procedures." This provision incorporates the prohibitions of the Anti-Kickback Act, 41 U.S.C. §§ 51-58, substantially verbatim and required KBR to include the provision in each of the subcontracts at issue in this complaint. The provision also authorized the contracting officer to withhold or offset an amount equal to the amount of any kickback in the event of a violation.

C. The Defendants' Noncompliance with These Provisions

30. As explained more fully below, KBR, through its subcontract administrators, conspired with La Nouvelle and First Kuwaiti to take kickbacks in return for giving La Nouvelle and First Kuwaiti favorable treatment in the award and performance of subcontracts, and while engaged in these kickback arrangements knowingly awarded numerous subcontracts to La Nouvelle and First Kuwaiti contrary to the requirements of LOGCAP III, the FAR, and KBR's Manual.

31. KBR committed these acts through subcontract administrators Stephen Lowell Seamans, Jeff

Alex Mazon, and Anthony Martin. As subcontract administrators, Seamans, Mazon, and Martin were responsible for negotiating and awarding subcontracts on behalf of KBR. At all times pertinent to this complaint, Seamans, Mazon, and Martin were acting with apparent authority and within the scope of their employment. Their conduct, therefore, is imputed to KBR.

32. As explained more fully below, KBR, through Seamans, Mazon, and Martin, knowingly awarded subcontracts to La Nouvelle and First Kuwaiti at prices greatly in excess of reasonable cost. By failing to enforce LOGCAP III, FAR, and KBR Manual requirements, KBR acted, at a minimum, with reckless disregard or deliberate ignorance with respect to the truthfulness of its claims for payment and the records underlying those claims.

33. La Nouvelle and First Kuwaiti acted with actual knowledge, reckless disregard, or deliberate ignorance when they created false invoices and made other false records and statements to get false or fraudulent claims paid or caused KBR to submit false claims.

III. Seamans, Mazon, and Martin Plead Guilty to Charges of Taking Kickbacks and Making False Statements

34. La Nouvelle Managing Partner Hijazi, and First Kuwaiti General Manager Al-Absi, promised and paid kickbacks to KBR subcontract administrators Seamans, Mazon, and Martin in exchange for favored treatment in the award, pricing, and performance of KBR subcontracts under LOGCAP III.

A. Seamans

On March 10, 2006, Seamans pleaded guilty to accepting $124,000 in kickbacks for the award of a subcontract to KBR subcontractor Tamimi Global Company, Ltd, in violation of the Anti-Kickback Act. In pleading guilty, Seamans also admitted that he accepted $305,000 from Hijazi/La Nouvelle: First, Seamans admitted receiving a $5,000 kickback in November 2002, for the award of a subcontract to La Nouvelle for cleaning services at Camp Arifjan in Kuwait (Subcontract 11). Seamans awarded the subcontract to La Nouvelle for $98,287, even though another subcontractor submitted a bid for the same subcontract for less than half the price. Second, Seamans admitted receiving $300,000 in May 2003, while still working for KBR, as an advance on Hijazi's offer to hire Seamans or enter into a consulting agreement with him for an annual payment of $1.2 million.

B. Mazon

36. On March 24, 2009, Mazon pleaded guilty to making a false written statement in connection with a subcontract he awarded to La Nouvelle in 2003 for fuel tankers (Subcontract 39).

37. Mazon also played a role in Subcontract 11, originally awarded under a kickback arrangement between Seamans and La Nouvelle. Mazon issued two change orders increasing the price of the subcontract from $98,287 to $2,259,840 without a proportionate increase in the scope of work of the subcontract.

38. On September 18, 2003, soon after Mazon left KBR, Hijazi gave Mazon a Kuwaiti bank draft for $1 million that concealed the fact that La Nouvelle was

the source of the money. (Mazon later tried to disguise the payment as a loan.) The $1 million was a reward for giving La Nouvelle favored treatment in the award and pricing of subcontracts. By the time he left KBR, Mazon had participated in the award of more than $90 million in subcontracts and change orders to La Nouvelle.

39. Hijazi also promised kickbacks to former KBR transportation manager Michael Ely. Hijazi made overtures about "providing [Ely] something for some help on the subcontracts." Hijazi told Ely, "help me and I'll help you." Hijazi offered to pay Ely's expenses for a trip to Dubai.

C. Martin

40. On July 13, 2007, Martin pleaded guilty to violating the Anti-Kickback Act in connection with the award of a $4.67 million subcontract to First Kuwaiti for 50 tractors and 50 refrigerated trailers (Subcontract 167). As part of his plea, Martin admitted participating in a kickback scheme with First Kuwaiti in which the company agreed to pay Martin 50 Kuwaiti Dinars (KWD) ($167)[2] per tractor per month under any subcontract Martin awarded to the company. Under the kickback agreement, Martin would have received about $50,000 for the initial term of Subcontract 167. Martin admitted including the agreed kickback amount in the price of the subcontract.

41. During his plea hearing, Martin also admitted awarding First Kuwaiti an $8.87 million subcontract for 150 tractors (Subcontract 190) and including the

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[2] The dollar amounts following the KWD amounts in this complaint are the approximate equivalents in U.S. dollars.

agreed kickback amount in the price of the subcontract. Under the kickback agreement, Martin would have received about $150,000 for the initial term of Subcontract 190.

42. Between Subcontracts 167 and 190, Martin awarded First Kuwaiti a $3.31 million subcontract for 60 tractors (Subcontract 203). Consistent with Martin's admission that his kickback arrangement with First Kuwaiti included a 50 KWD ($167) kickback per tractor per month under any subcontract Martin awarded to the company, Martin would have received about $60,000 for the initial term of Subcontract 203.

43. Hijazi told Seamans that Martin also took a kickback from La Nouvelle. Hijazi said that "Tony" just wanted his $100,000 to get out and start his own business.

IV. Defendants' False Claims in Connection with Subcontracts Awarded by Seamans, Mazon, and Martin

44. Seamans, Mazon, and Martin awarded numerous subcontracts to La Nouvelle and First Kuwaiti while engaged in kickback schemes. As detailed below, they awarded these subcontracts (a) without regard to mandated procedures regarding Material Requisitions and authority; (b) despite lower bids from non-kickback paying subcontractors or without competition at all; (c) on a sole source basis without proper justification or analysis to ensure that the prices were reasonable; (d) without regard to the quality of the goods and services provided; and/or (e) knowing that the prices were inflated. Mazon and Martin also approved invoices for payment under these subcontracts, even when they knew that (a) a

valid, signed contract did not exist; (b) the amount of the invoice exceeded the amount agreed to in the subcontract; (c) the goods and services had not or would not be provided in accordance with the subcontract; and/or (d) the amount of the invoice was inflated by kickbacks or was otherwise unreasonable. These costs were, therefore, unallowable, rendering the claims for those costs false or fraudulent for reasons in addition to the fraud attributable to the kickback schemes. The details of these subcontracts follow.

A. La Nouvelle – Subcontract 11 (Cleaning Services)

i. Award and Change Orders

45. On November 7, 2002, Seamans issued a solicitation for subcontract GU49-KU-S00011 (Subcontract 11) for cleaning services at Camp Arifjan in Kuwait. The deadline for bids under the solicitation was November 14, 2002. As stated above, Seamans admitted in his guilty plea that he had awarded this subcontract to La Nouvelle in exchange for a kickback.

46. Seamans consistently ignored mandated procurement procedures in awarding Subcontract 11:

(a) Seamans awarded the subcontract to La Nouvelle even though there was a bid from another subcontractor at less than half the price.

(b) Seamans prepared a false Justification for Award to Other Than Low Bidder, stating that he was not convinced the low bidder could perform the work, even though that company had included in its bid numerous

certificates from the Army attesting to its good work.

(c) Seamans solicited a bogus bid from Tamimi (the subcontractor at the center of his guilty plea for accepting kickbacks) for an amount higher than La Nouvelle's bid to enhance the appearance of competition.

(d) Seamans prepared a false Bid Tabulation/ Justification Worksheet, stating that the bids had all been received by the deadline, November 14, 2002, when La Nouvelle's and Tamimi's bids were dated after the deadline on November 17 and 18, 2002.

47. Seamans and Hijazi executed Subcontract 11 on November 20, 2002, for 29,784 KWD ($98,287) for a one-year term. Hijazi paid Seamans a $5,000 kickback for the award the same month.

48. As a further reward for awarding La Nouvelle the subcontract, Hijazi/ La Nouvelle offered to hire Seamans or enter a consulting agreement with him for $1.2 million a year. Hijazi told Seamans that he liked to "take care" of those people who have "taken care" of La Nouvelle and explained to Seamans how the cleaning services subcontract at Camp Arifjan had opened the door to the award of additional subcontracts by KBR to La Nouvelle. (Ultimately, La Nouvelle was awarded more than $90 million in subcontracts.) Hijazi transferred $300,000 to Seamans' bank account in Maryland around May 20, 2003, as an advance payment on the $1.2 million agreement.

49. On December 20, 2002, only one month after Seamans awarded Subcontract 11 to La Nouvelle, Mazon issued Change Order 1 to the subcontract. The

change order increased the price from 29,784 KWD ($98,284) to 274,800 KWD ($906,840). Mazon justified the price increase by stating that the scope of work had been increased and the period of performance had been extended one month. In fact, Change Order 1 increased the monthly price of the subcontract nearly eight-fold for what was at most twice the work. Change Order 1 also included tasks outside the scope of work and, therefore, outside the scope of the subcontract.

50. On April 25, 2003, Mazon issued Change Order 2, increasing the price of Subcontract 11 again, this time from 274,800 KWD ($906,840) to 684,800 KWD ($2,259,840). Mazon again justified the price increase by stating that the scope of work had been increased. Change Order 2 reverted to the one-year term of the original subcontract. In other words, Subcontract 11 went from 29,784 KWD ($98,287) for 12 months, to 274,800 KWD ($906,840) for 13 months, to 684,800 KWD ($2,259,840) for the same 12 months as the original award. In fact, Change Order 2 more than doubled the price from Change Order 1 (which was already inflated), while decreasing the period of performance, without a commensurate increase in the scope of work.

51. Mazon ignored mandated procurement procedures. Change orders of the magnitude of Change Orders 1 and 2 required Mazon to compete the work or justify awarding it on a sole source basis. KBR's file on Subcontract 11 contains no justification for awarding Change Orders 1 and 2 without competition and no price reasonableness analysis. In fact, the purported increase in work from the original award to Change Order 2 was grossly disproportionate to the

23-fold increase in price from the original award and, therefore, was not justified.

ii. Invoices

52. Mazon, Martin, and other KBR procurement personnel continued to ignore procurement procedures and show favoritism to La Nouvelle during the invoicing and payment process.

53. La Nouvelle began invoicing for its work on Subcontract 11 in January 2003. Each invoice was for a month of services.

(a) La Nouvelle consistently invoiced for amounts in excess of the subcontract price. For example, La Nouvelle's invoices for the third and fourth months of the subcontract term (February 10-April 9, 2003) were 69,300 KWD each. This amount was more than three times the Change Order 1 price that was in effect at the time and even exceeded the Change Order 2 price, which would not be signed until two weeks after the period invoiced.

(b) La Nouvelle continued to bill at 69,300 KWD a month for the next five months (April 10-September 9, 2003). These invoices represented that La Nouvelle had provided the Change Order 1 level of work (for which the price was 22,990 KWD a month), but billed at 69,300 KWD – 3 times the Change Order 1 price and even exceeding the Change Order 2 price (57,067 KWD a month).

(c) These invoices were consistently approved by Mazon, Martin, and other KBR procure-

ment personnel without verifying that the amounts requested were for work within the scope of the subcontract and at the agreed upon price.

54. In late 2003 or early 2004, La Nouvelle submitted new invoices to replace those referred to above. These invoices charged 63,900 KWD a month. KBR approved these invoices for payment, even though they still exceeded the 57,067 KWD a month price under Change Order 2.

B. La Nouvelle – Subcontract 39 (Fuel Tankers)

55. LOGCAP III, Task Order 36, directed KBR to establish an Aerial Port of Debarkation (APOD). (An APOD is a military airport.) As of January 21, 2003, the task order required KBR to "receive, store, account for and issue retail" fuels of several types up to a total capacity of 65,000 gallons.

56. On January 26, 2003, KBR issued a Material Requisition for 16 fuel tankers with capacities of 3,000 and 5,000 gallons. The estimated cost of fulfilling the requirement was $685,080.

57. On February 2, 2003, Mazon solicited bids via email.

58. On February 14, 2003, Mazon awarded La Nouvelle subcontract GU49-KU-S00039 (Subcontract 39) for 1,673,100 KWD ($5,521,230). The subcontract was supposed to be for a term of six months through August 14, 2003, but mistakenly carried a termination date of July 13, 2003.

59. Mazon manipulated procurement procedures to award Subcontract 39 to La Nouvelle at an inflated price:

(a) Mazon awarded the subcontract to La Nouvelle even though La Nouvelle's bid did not contain sufficient information to determine what its bid was. On information and belief, Mazon constructed the price using information in the high bid. Specifically, La Nouvelle's bid contained a price per tanker (6,500 KWD), but did not specify how many tankers the company would provide. Mazon constructed La Nouvelle's bid by multiplying the 6,500 KWD per tanker by 13 – the number of tankers quoted by the high bidder – for a total subcontract price of 507,000 KWD (13 tankers at 6,500 KWD per tanker per month, for 6 months).

(b) Mazon then inflated La Nouvelle's bid threefold by taking his constructed price of 507,000 KWD, converting it to dollars, but putting the number in KWD on the Bid Tabulation/Justification Worksheet, and then converting it *again*, bringing the price to $5,521,230.[3] Mazon applied the same procedure to the high bidder to give the appearance of competition and at the same time make an award to La Nouvelle at the inflated price (after eliminating the low bidder).

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[3] Mazon used a conversion rate of 3.3 dollars/KWD. 507,000 KWD times 3.3 equals $1,673,000. Multiplied again by 3.3 equals $5,521,230.

(c) Because La Nouvelle's price ($5,521,230) so far exceeded KBR's estimate ($685,080) for the subcontract, Mazon had to get the approval of the KBR project manager. In a Memorandum for the Record, Mazon stated that he informed the project manager and had his approval. In his guilty plea, Mazon admitted that this statement was false.

(d) La Nouvelle advised KBR that it would provide only 10 tankers, not the 13 tankers Mazon used to construct La Nouvelle's bid price. Despite this knowledge, KBR failed to reduce the price of the subcontract.

60. As awarded, the monthly price of the subcontract was 278,850 KWD ($920,205).[4] La Nouvelle submitted six invoices at 278,850 KWD each under the intended six-month subcontract. Mazon and Martin approved several of these invoices.

61. In September 2003, Martin issued Change Order 1 under Subcontract 39 to correct the term of the subcontract from five months to the six months originally intended. The change order did not affect the price of the subcontract.

62. La Nouvelle invoiced, and KBR paid, the inflated invoices for six months under Subcontract 39.

63. Subcontract 39 was inflated by at least $4,234,230:

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[4] 1,673,100 KWD per month ÷ 6 months = 278,850 KWD; $5,521,230 per month ÷ 6 months = $920,205.

Price as Awarded, Invoiced, and Paid

A - Price Per Tanker Per Month

21,450 KWD ($70,785)

B Number of Tankers

13

C Number of Months

6

(A x B x C) Total Price

1,673,100 KWD – $5,521,230

Price As Bid And Performed

A - Price Per Tanker Per Month

6,500 KWD $21,450

B Number of Tankers

10

C Number of Months

6

(A x B x C) Total Price

390,000 KWD – $1,287,000

INFLATED COST (award less bid before inflation)

(A x B x C) Total Price

1,283,100 KWD - $4,234,230

64. On October 15, 2003, Martin issued Change Order 2 under Subcontract 39, extending the term of the subcontract six months and increasing the subcontract price by 1,673,100 KWD ($5,521,230) – the same price as for the original six months of the subcontract.

65. Martin ignored mandated procurement procedures by awarding Change Order 2 without conducting any analysis to determine whether the price was reasonable.

66. In fact, the price was not reasonable because it extended by six months the inflated price of the subcontract as awarded by Mazon and continued to price the subcontract as though La Nouvelle were supplying 13 tankers when it was supplying only 10.

67. Consequently, Subcontract 39, including the Change Order 2 extension, was inflated by at least $8,468,460.

C. La Nouvelle – Subcontract 124 (Fuel Tankers)

68. Subcontract 39 provided sufficient capacity to fulfill the Army's requirement under the Statement of Work for Task Order 36 for 65,000 gallons of fuel storage at the APOD.

69. On February 3, 2003, the Army reduced the requirement to 45,000 gallons. LOGCAP III, Task Order 36, Change 6 (Statement of Work) (Feb. 3, 2003).

70. Nevertheless, in early March 2003, Mazon and La Nouvelle agreed to a second six-month subcontract for fuel tankers at the APOD for an *additional* 68,000 gallons of capacity. In other words, Mazon and La Nouvelle agreed to a second subcontract that would increase the fuel capacity to 136,000 gallons, even though the Army had reduced the requirement to 45,000 gallons and any capacity beyond that would be outside the scope of KBR's contract with the Army.

71. The agreement was committed to writing in subcontract GU49-KU-S000124 (Subcontract 124), signed June 20, 2003. The price of the subcontract was 254,400 KWD ($845,371).

72. Mazon ignored mandated procurement procedures in awarding the subcontract to La Nouvelle:

(a) Mazon verbally awarded the subcontract without a Statement of Work requirement under Task Order 36 and without a Material Requisition. (The only Material Requisition in KBR's file for the award of Subcontract 124 is dated May 22, 2003 – almost three months after the oral agreement.)

(b) The subcontract was awarded to La Nouvelle on a sole source basis without obtaining competing bids and without preparing a sole source justification.

(c) Mazon directed La Nouvelle to begin performance immediately, without a written subcontract.

73. Significantly, the scopes of work for Subcontracts 124 and 39 are virtually identical. Even the typos are the same. The work covered by these subcontracts, therefore, appears to be the same.

74. In fact, KBR's files for Subcontracts 124 and 39 contain documents that identify the tankers by number and 10 tankers appear under both subcontracts: 651, 691, 693, 695, 696, 697, 713, 715, and 790. On information and belief, La Nouvelle knowingly charged KBR, and KBR knowingly paid, for these tankers twice.

75. More generally, La Nouvelle invoiced, and KBR paid, for at least four months for the services La Nouvelle purportedly delivered under Subcontract 124, even though they were unnecessary and outside the scope of LOGCAP III.

D. La Nouvelle – Subcontract 51 (Forward Area Refueling Point)

In late February 2003, Mazon solicited proposals for subcontract GU49-KU-S00051 (Subcontract 51) to construct a forward area refueling point. (A forward area refueling point is a refueling area near combat operations.) Three companies responded:

AGT	78,000 KWD ($257,400)
Al-Hamara	223,000 KWD ($735,900)
La Nouvelle	240,000 KWD ($792,000)

77. Rather than making an award, Martin, on March 5, 2003, broadcast an email referring to an alleged verbal amendment to the solicitation with additional requirements. The email requested new bids within two and a half hours. Al-Hamara increased its bid to 343,750 KWD ($1,134,375) to cover the new requirements. A new bidder, Earthsafe, submitted a bid for 565,697 KDWs ($1,867,460). Despite the new requirements, La Nouvelle's bid remained unchanged at 240,000 KWD ($792,000). La Nouvelle had gone from the high bidder for the original solicitation to the low bidder for the solicitation with the alleged verbal amendment.

78. On March 6, 2003, Mazon awarded Subcontract 51 to La Nouvelle for 240,000 KWD ($792,000).

79. La Nouvelle completed the work under Subcontract 51 around April 30, 2003. A month and a

half later, on June 17, 2003, Mazon issued Change Order 4 to the subcontract, retroactively increasing the price to 603,982 KWD ($1,993,141) – a price in excess of the previous high bid for the subcontract. Mazon issued the change order as a favor to Hijazi and at Hijazi's insistence. Hijazi justified the price increase by La Nouvelle's use of stainless steel piping. Mazon accepted the justification even though KBR had not asked for, accepted, or approved the stainless steel piping in advance. La Nouvelle invoiced, and KBR paid the invoices, under the subcontract.

E. La Nouvelle – Subcontract 53 (Buses)

80. On March 17, 2003, Mazon awarded subcontract GU49-KU-S00053 (Subcontract 53) to La Nouvelle for eight buses at 80,000 KWD ($264,000). The term of the subcontract was one month, from March 17, 2003 to April 16, 2003. Mazon awarded the subcontract to La Nouvelle on a sole source basis without obtaining competing bids and without preparing a sole source justification.

81. La Nouvelle delivered the first buses under the subcontract on April 7, 2003 – eight days before the subcontract ended – and completed delivery on April 15, 2003, at the earliest. Despite its failure to perform at least 22 days of the 30-day term of the subcontract, La Nouvelle invoiced, and KBR paid, for the full month.

82. On June 7, 2003, Mazon retroactively extended the subcontract from April 17 to August 17, 2003. La Nouvelle continued to invoice, and KBR continued to pay, under the subcontract.

F. La Nouvelle – Subcontract 63 (Fuel Trucks)

83. On March 17, 2003, Mazon awarded subcontract GU-49-KU-S00063 (Subcontract 63) to La Nouvelle for five fuel trucks at 6,500 KWD ($13,333) per truck per month for a six-month term from March 17, 2003 to September 16, 2003.

84. Mazon ignored mandated procurement procedures in awarding the subcontract:

(a) There are no bids in KBR's file for Subcontract 63.

(b) There are two Bid Tabulation/Justification Worksheets, but neither of these supports an award to La Nouvelle. The first worksheet is dated before the award and lists four bids. Each bid is lower than the award price and none of the purported bidders is La Nouvelle. The second worksheet, completed after the award, lists only La Nouvelle and states that a "sole source justification is unavailable."

85. La Nouvelle invoiced, and KBR paid, under the subcontract.

G. La Nouvelle – Subcontracts 240 and 76 (Reefers)

86. The Army directed KBR to procure "initially 100 (and up to 400) commercially leased refrigerated truck systems." LOGCAP III, Task Order 43, Change Order 1 (¶ 3.5) (February 14, 2003). Task Order 43, which supported the Theater Transportation Mission (TTM), generally required KBR to procure trucks and trailers to transport food, fuel, equipment, and

supplies for the troops. The "truck," "head," or "tractor" is the motorized end of the "system." The motorized end pulls the "trailer" or "tail," which is basically a storage container for fuel, food, or other cargo. Refrigerated trailers are called "reefers."

87. In early March 2003, Mazon gave a verbal direction to La Nouvelle to supply seven reefers for 1,600 KWD ($5,280) per reefer per month. Mazon awarded the procurement to La Nouvelle on a sole source basis without obtaining competing bids and without preparing a sole source justification. The verbal direction was committed to paper and called Subcontract GU49-KU-S100240 (Subcontract 240), but only after the fact.

88. In early April 2003, the Army issued orders to increase the number of reefers to 400.

89. On April 29, 2003, Mazon awarded subcontract GU49-KU-S00076 (Subcontract 76) to La Nouvelle, for 287 reefers at 1,600 KWD per reefer per month.

90. Mazon ignored mandated procurement procedures in awarding the subcontract:

(a) On April 6, 2003, KBR issued Material Requisition R946261 for 294 reefers with a required delivery date of April 7, 2003. The requirement was later reduced to 287. On April 7, 2003, Hijazi sent Mazon an email offering an unspecified number of reefers at 1,600 KWD ($5,280) per reefer per month, beginning the following day. Mazon agreed to procure the reefers from La Nouvelle the same day without a written subcontract and without seeking competing bids, even though

Mazon knew that there were other reefer suppliers. In fact, Mazon had awarded a reefer subcontract to NCC a month earlier for 1,258 KWD ($4,150) per reefer per month.

(b) Mazon justified the sole source award on the ground that La Nouvelle would deliver 25 reefers a day "over the next several weeks" and not invoice KBR until all the reefers had been delivered. At 25 reefers a day, it would take La Nouvelle 12 days to deliver 287 reefers, or until April 20, 2003. Under the agreed schedule, La Nouvelle should have delivered all 287 reefers by April 20, 2003. Based on documents prepared by KBR and submitted to the Army, La Nouvelle had delivered only 136 of the 287 reefers promised as of April 29, 2003 – the date the subcontract was signed.

91. In fact, La Nouvelle ultimately delivered only 173 reefers under Subcontract 76.

92. KBR's file for Subcontract 76 contains four invoices from La Nouvelle covering the four months from April 8 to August 7, 2003. La Nouvelle billed KBR the full subcontract price for 255 reefers for each of those months. Martin approved these invoices in July and September 2003, even though he knew that La Nouvelle's deliveries were late and that it failed to deliver more than 173 reefers, and even though Mazon had justified the award on La Nouvelle's delivery schedule and agreement not to invoice until all the reefers had been delivered.

93. KBR admitted La Nouvelle's failure to deliver in a July 2004 internal memorandum in which KBR

acknowledged that it could confirm the delivery of only 173 reefers. KBR appears to have discovered the shortfall sometime in early May 2003, when Martin began awarding subcontracts to another company in an apparent effort to make up for La Nouvelle's shortfall.

(a) On May 3, 2003, Martin awarded Kuwait Establishment Company (KEC) a subcontract for 24 reefers at 3,150 KWD ($10,395) per reefer per month. The only Material Requisition that appears in KBR's file to support this subcontract is the same Material Requisition that Mazon used to support the award of Subcontract 76 to La Nouvelle – MR R946261, dated April 6, 2003, for 294 reefers.

(b) On May 29 and June 10, 2003, Martin awarded two more subcontracts to KEC for a total of 100 reefers (after a reduction in one of the subcontracts), also at 3,150 KWD ($10,395) per reefer per month. KBR's routine practice was to have the Army's Administrative Contracting Officer (ACO) sign the Material Requisition. Neither of the Material Requisitions for these subcontracts was signed by the ACO.

94. On May 25, 2005, ten months after the July 2004 memorandum in which KBR acknowledged that it could confirm the delivery of only 173 reefers, KBR issued Change Order 3 to Subcontract 76. Under the change order, La Nouvelle credited KBR 524,640 KWD. The credit reflected deliveries of 175 reefers in April 2003, 203 reefers in May and June 2003, and 231 reefers in July 2003, instead of the 255 reefers La

Nouvelle had billed KBR for each of the four months. Because KBR knew that La Nouvelle had delivered only 173 reefers, KBR knowingly allowed La Nouvelle to retain payments for undelivered reefers when it issued Change Order 3.

95. In addition, KBR's July 2004 memorandum documented that 12 of the reefers had the same vehicle identification number as reefers claimed under subcontracts with other suppliers, including First Kuwaiti.

96. According to KBR theater transportation manager Michael Ely, it appeared that the subcontractors "owned" the same reefers. On one occasion, Ely met with a subcontractor at a particular location (Third Ring Road, Kuwait City) to inspect the subcontractor's reefers. On the same day, Hijazi took Ely to inspect La Nouvelle's reefers at the same location and identified the same reefers. Ely advised KBR's procurement department, who told him not to worry about it.

97. La Nouvelle also billed the same reefers simultaneously to Subcontracts 76 and 240, resulting in double billing.

H. First Kuwaiti – All Truck Subcontracts Awarded by Martin or Based on Rates Established by Martin

98. In his guilty plea, Martin admitted to engaging in a kickback scheme with First Kuwaiti and including the amount of the kickback in the subcontract price for Subcontracts 167 and 190. Under their agreement, First Kuwaiti would pay Martin 50 KWD ($167) per head (tractor) per month under any subcontract Martin awarded to First Kuwaiti.

Therefore, any subcontract awarded by Martin or based on rates established by Martin was inflated, at a minimum, in the amount of the promised kickbacks. In addition to awarding First Kuwaiti subcontracts inflated by kickbacks, Martin (as detailed below) awarded First Kuwaiti subcontracts over lower bidders, on a sole source basis without justification, or in contravention of other requirements, which further inflated subcontract costs.

I. First Kuwaiti – Subcontract 93 (Water Trucks)

99. On April 14, 2003, Martin awarded subcontract GU49-KU-S00093 (Subcontract 93) to First Kuwaiti for five water trucks for six months at a price of 75,300 KWD ($252,195) .

100. In awarding the subcontract, Martin ignored mandated procurement procedures:

(a) Two companies submitted bids: AGT for 60,000 KWD ($200,952) and First Kuwaiti for 75,300 KWD ($252,195). Martin disqualified AGT on the ground that it "could not meet the schedule."

(b) Martin awarded the subcontract, without additional approvals, even though his authority to award subcontracts at the time was limited to $50,000.

101. Four days after First Kuwaiti delivered the trucks, KBR declared them unfit to perform the required task and canceled the subcontract. On April 27, 2003, KBR awarded a replacement subcontract to AGT, even though just 13 days earlier KBR had awarded the subcontract to First Kuwaiti rather than

AGT because the latter was allegedly unable to perform the subcontract.

102. Despite the fact that First Kuwaiti's trucks were unfit to perform the subcontract and that the subcontract was cancelled 13 days after the award, First Kuwaiti claimed payment for three and a half months plus repair costs. On July 8, 2004, KBR settled First Kuwaiti's claims for 19,065 KWD ($63,852.50), representing repair costs and one and a half months' performance, even though KBR knew that the claim was false.

J. First Kuwaiti – Subcontract 121 (Fuel Trucks)

103. On April 21, 2003, Martin awarded First Kuwaiti subcontract GU49-KU-S00121 (Subcontract 121) for two fuel trucks at 4,250 KWD per truck per month for six months, for a total of 51,000 KWD ($170,814.30) for the subcontract term.

104. In awarding the subcontract, Martin ignored mandated procurement procedures:

(a) Martin awarded the subcontract without competition. Although there is a Bid Tabulation/Justification Worksheet that identifies a second bid submitted by La Nouvelle, that bid is for a different subcontract. There is no other indication in KBR's file for Subcontract 121 that the contract was competitively bid. Indeed, in a memorandum to the file, Martin stated that the companies he contacted failed to submit bids because they could not meet the urgent need for the tankers on such short notice

(b) Martin awarded the subcontract, without additional approvals, even though his authority to award subcontracts at the time was limited to $100,000.

105. Despite the urgent need asserted by Martin, First Kuwaiti failed to deliver the two trucks until May 28 and June 2, 2003 – more than a month after the subcontract award.

106. On October 23, 2003, KBR paid First Kuwaiti for two 10,000-gallon fuel trucks, even though First Kuwaiti provided only one 8,000-gallon and one 3,000-gallon truck.

K. First Kuwaiti – Subcontract 167 (50 Heads/50 Reefers)

107. Martin awarded First Kuwaiti subcontract GU49-KU-S00167 (Subcontract 167) for 50 heads and 50 reefers on June 17, 2003.

108. Martin ignored many mandated procedures in awarding the subcontract:

(a) There is no contemporaneous Material Requisition to support the solicitation of a subcontract. The only Material Requisition in KBR's file on Subcontract 167 is dated August 22, 2003, two months after the award of the subcontract.

(b) Nevertheless, Martin issued a solicitation on June 15, 2003, seeking bids for "50 Reefers w/heads" no older than 2002, for six months. Based on documents in KBR's subcontract file, Aratrans submitted a timely bid at 3,200 KWD per head/reefer combination per

month, and could deliver on June 28, 2003. First Kuwaiti submitted an incomplete bid, offering heads only at 2,750 KWD per head per month. On June 20, 2003, Martin emailed Al-Absi notifying him that he was awarding the subcontract to First Kuwaiti, including reefers, for 4,650 KWD per head/reefer combination per month, and that he expected delivery to be completed by June 24, 2003. (By comparison, Aratrans had offered 3,200 KWD per head/reefer combination with delivery in full on June 28, 2003.)

(c) A Price Reasonableness Determination prepared by Martin justified the price based on "adequate price competition per [the] attached Bid Tabulation. However, there is no justification in the Bid Tabulation /Justification Worksheet for awarding the subcontract to First Kuwaiti at 4,650 KWD a month rather than to the low bidder, Aratrans, at 3,200 KWD a month. The Price Reasonableness Determination also included a comparison to an earlier subcontract with NEC at 2,878 KWD, but this price is 40 percent lower than First Kuwaiti's.

(d) The Price Reasonableness Determination is dated August 16, 2003, but the date on the "attached" Bid Tabulation/Justification Worksheet is September 5, 2003. Although KBR's Manual mandates that both documents should be prepared before subcontract award or as soon as practicable after subcontract

award, here they were prepared two months or more after the award.

(e) Authority to award the subcontract was not given until November 26, 2003, more than four months after the award, by KBR official David Hadcock.

109. By June 28, 2003 (the date Aratrans had promised to deliver all 50 head/reefer combinations), First Kuwaiti had delivered only 19 heads and 16 reefers. First Kuwaiti did not complete delivery until July 14, 2003 (although some reefers may never have been delivered).

110. First Kuwaiti billed, and KBR paid, the full subcontract price as though all 50 head/reefer combinations had been delivered as of June 20, 2003.

111. The subcontract required First Kuwaiti to provide KBR with a list documenting the heads and reefers as they were delivered. KBR officials reviewing the subcontract file nearly a year after the subcontract expired found the file deficient and had to ask First Kuwaiti for the information well after the fact on May 24, 2004.

112. By June 2004, KBR's Theater Transportation Mission (TTM), the KBR unit responsible for the vehicles, had determined that it was "sure that 41 units were returned [to First Kuwaiti] on or before the expiration date of 20 Dec. 2003. Of the remaining 9 units; eight (8) are believed to have been destroyed and one is currently being used. . . . " By July 29, 2004, TTM reduced the number of unreturned units to five, which it described as missing in action. As to

these, TTM stated, "Mr. Wadih Al-Absi refuses to submit a claim and/or execute a change order."[5]

113. Despite delivering late and possibly failing to deliver some units at all, First Kuwaiti demanded payment as though every vehicle had been delivered by June 20, 2003 (on the first day of the subcontract term) and remained in operation through June 2004 – six months after expiration of the subcontract.

114. Despite being "sure" that 41 of the 50 units had been returned by December 20, 2003, KBR settled First Kuwaiti's claims for alleged unpaid amounts under the subcontract by extending the subcontract, after the fact, through March 2004, and increasing the price to 2,170,000 KWD ($7,267,981). KBR also paid First Kuwaiti for nine lost or destroyed head/reefer combinations despite recovering four of those units.

L. First Kuwaiti – Subcontract 203 (60 Heads)

115. KBR personnel prepared and approved a Material Requisition for 60 heads for six months in June 2003. The document specified delivery by June 24, 2003, and estimated the cost at $4,000 per head per month.

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[5] Under the terms of the subcontracts, KBR paid a monthly rate to lease units from First Kuwaiti. When a unit was lost or destroyed in the war, KBR would notify First Kuwaiti. This notice should have terminated KBR's obligation to make lease payments on the unit and triggered First Kuwaiti's obligation to present KBR with a claim for the depreciated value of the lost or destroyed unit. As alleged above, KBR continued to make lease payments on lost or destroyed units and also paid First Kuwaiti's claims for the value of those units.

116. On July 2, 2003, Martin solicited bids setting a deadline of July 5, 2003.

117. On July 5, 2003, Actel and First Kuwaiti responded with identical prices, with Actel offering two additional heads. Actel offered delivery one week after signing the subcontract; First Kuwaiti offered immediate delivery.

118. Martin awarded the subcontract to Actel on July 7, 2003, but demanded that Actel email Martin by 10 a.m. the same day a "detailed schedule of delivery of the 60 Heads that you were awarded." Martin warned Actel that "if the schedule is too extensive the contract will be voided. You [*sic*] commitment was for immediate delivery." Martin voided the award, purportedly because Actel could not deliver quickly enough.

119. Three days later, on July 10, 2003, Martin awarded subcontract GU49-KU-S00203 (Subcontract 203) to First Kuwaiti for 60 heads at 2,750 KWD per head per month for six months (July 10, 2003 to January 10, 2004). (According to KBR's file for Subcontract 203, the award was not authorized until five weeks later on August 17, 2003, by KBR official Steve Grumbach.)

120. Consistent with First Kuwaiti's promised delivery one day after signing, all 60 heads should have been delivered July 11, 2003. According to KBR's daily reports, however, deliveries did not begin until July 14, 2003, when 13 heads were delivered. By August 9, 2003 – one month after full delivery had been promised – only 22 (of the 60) heads had been delivered. For this first month (July 10 to August 9, 2003), First Kuwaiti billed, and KBR paid, the full

price under Subcontract 203, as if First Kuwaiti had delivered all 60 heads on July 11, 2003.

121. In July 2004, KBR and First Kuwaiti were trying to resolve First Kuwaiti's final billings under Subcontract 203. Apparently, First Kuwaiti was claiming $100,000 for each lost or destroyed head as though it were provided in new condition with the expectation that it would be returned in new condition (despite subcontract lease prices based on warzone conditions), *plus* the monthly subcontract price. In a July 29, 2004 email, KBR's negotiator in the matter stated, "it appears from the email that [Al-Absi] is expecting us to provide this equipment back to him in a like new condition. There is only one invoice outstanding against this subcontract. . . . [H]e is refusing to submit a [sworn] claim for [lost or destroyed heads]. He is expecting KBR to pay him $100,000 for each lost truck and it will be paid within 30 days of invoice presentation. This is absolute highway robbery."

122. Despite this knowledge, KBR agreed to settle First Kuwaiti's claims by extending the subcontract, after the fact, to August 10, 2004 – seven months after expiration of the subcontract – and more than doubling the subcontract price to 2,147,423 KWD ($7,192,364). On information and belief, KBR paid for 10 lost or destroyed heads even though all but 4 heads were returned.

M. First Kuwaiti – Subcontract 190 (150 Heads)

123. On August 19, 2003, Martin awarded subcontract GU49-KU-S00190 (Subcontract 190) to First Kuwaiti for 150 heads at 2,950 per head per month for

six months, totaling 2,655,000 KWD. Delivery was required by August 30, 2003.

124. In awarding this subcontract, Martin ignored mandated procurement procedures:

(a) The Material Requisition that supported the solicitation is dated August 30, 2003, after the award.

(b) Martin awarded the subcontract to First Kuwaiti at 2,950 KWD per head per month, even though there were two companies that bid 2,900 KWD per head per month. In other words, First Kuwaiti's bid was 50 KWD per head per month more than two lower bidders. This is the same amount as the kickback that Martin admitted in his guilty plea he had included in Subcontract 190's price.

(c) The agreed delivery schedule pre-dates the award date of the subcontract.

(d) The subcontract was approved November 23, 2003, three months after the award, by KBR official Drew Bacon.

125. Under the subcontract, First Kuwaiti agreed to provide KBR with 150 heads for six months to be delivered 50 heads at a time on July 26, 27, and 28, 2003. According to KBR's daily reports to the Army, however, the number of heads KBR had on hand did not increase substantially until August 17, 2003, when 110 heads were delivered, and KBR did not receive the full complement of 150 heads until September 19, 2003. Yet First Kuwaiti billed, and KBR paid, for the first month under Subcontract 190, as

though First Kuwaiti had delivered all 150 heads on July 24, 2003.

126. KBR issued three change orders extending Subcontract 190 an additional 11 months for a total price of 7,500,174 KWD ($25,120,332). Had the subcontract been awarded to either of the lower bidders, KBR would have saved at least $406,000 over the extended term of the subcontract.

127. In July 2004, KBR and First Kuwaiti were trying to resolve First Kuwaiti's final billings under Subcontract 190. KBR had paid First Kuwait for only two months at that point. First Kuwaiti was claiming compensation for lost or destroyed heads as well as the monthly subcontract price for operational heads. In a July 29, 2004 email, KBR's negotiator in the matter commented, "Mr. Al-Absi refuses to submit a [sworn] claim for the approximately 25 lost assets and insists on continuing to invoice KBR [monthly under the subcontract]. I am tired of [First Kuwaiti's] ways of trying to milk KBR of extra money and false claims. I am going to work with [KBR's Theater Transportation] group to return ALL of his assets to him as quickly as possible and I will[,] unless directed to do differently[,] will [*sic*] not conduct business with this man."

128. Despite this knowledge, KBR paid First Kuwaiti for 12 months (to August 2004) at monthly rates that exceeded lower bidders, for vehicles that were not delivered as promised, and for 25 vehicles that had been reported as lost or destroyed in the spring of 2004. After the 12 months, KBR knowingly continued to pay First Kuwaiti for 125 vehicles through at least December 24, 2004, at the rates awarded by Martin.

N. Non-Mission Capable Reefers

129. Some of the reefer tractors and trailers leased to KBR by La Nouvelle and First Kuwaiti pursuant to the subcontracts identified above were defective, damaged, inoperable, or otherwise non-mission capable (NMC).

130. The Army's statement of work for Task Order 43 required that reefers be mission capable. Paragraph 3.5 stated: "The refrigeration system must have chilling and freezing capability." Paragraph 3.20.1 stated: "The equipment must be capable of performing its intended function, in a serviceable condition, and in a safe state of operation."

131. Some of the initial reefer trailers and trucks KBR procured lacked even the basic equipment to work as a reefer trailer. According to former KBR Theater Transportation Mission foremen Walter Wynia, whoever procured the trailers must not have looked at them.

132. Another former KBR employee, Ken Blalock, personally took an inventory of the 200 or so reefers located at Camp Arifjan in September 2003. Blalock found over half the reefers in such poor condition that he believed whoever procured them must never have looked at them. According to Blalock, only about 25 percent of the reefers procured were in usable condition. Some reefers did not even have the basics needed to be a reefer, for example, they were missing compressors or doors. Other reefers were missing tires.

133. According to former Theater Transportation Mission Manager Ely and Foreman Deborah McGinnis,

the Government paid on a monthly basis for reefers that were "completely junk."

O. Morgue Reefers

134. Some reefers procured by KBR were used as temporary morgues, including a reefer identified as R-89.

135. Sometime around July 2003, while R-89 was being used as a morgue, the refrigeration motor broke down, leading KBR to send it back to Kuwait for repairs.

136. In late August 2003, after R-89 was repaired, KBR used the reefer to transport potable ice for the troops at Camp Matilda in Kuwait. KBR did not properly sanitize R-89 before loading it with potable ice for use by the troops.

137. KBR also used other morgue reefers to transport ice and food for human consumption without properly sanitizing them first. KBR charged the Government for the costs of these reefers without disclosing that they had been used as morgue reefers and had not been properly sanitized. The use of these morgue reefers to transport ice and food without proper sanitation was material to the Government's decision to pay KBR's claims for these costs.

V. KBR's Claims to the United States

138. KBR submitted claims to the United States for the costs incurred under each of the subcontracts identified above, plus administrative costs and fees, knowing that the claims were false or fraudulent because (a) the subcontracts were awarded without regard to mandated procedures regarding Material

Requisitions and authority; despite lower bids from non-kickback paying subcontractors or without competition at all; (iii) on a sole source basis without proper justification or analysis to ensure that the prices were reasonable; (iv) without regard to the quality of the goods and services provided; and/or (v) knowing that the prices were inflated, and because (b) KBR paid invoices knowing that (i) a valid, signed contract did not exist; (ii) the amount of the invoice exceeded the amount agreed to in the subcontract; (iii) the goods and services had not or would not be provided in accordance with the subcontract; and/or (iv) the amount of the invoice was inflated by kickbacks or was otherwise unreasonable. As a result, these costs were unallowable and false. La Nouvelle and First Kuwaiti knowingly caused and conspired with KBR to submit these false claims. KBR, La Nouvelle, and First Kuwaiti intended their false statements and records related to these claims to influence the Government's decision to pay KBR, and this was the reasonably foreseeable result of such false statements and records.

VI. Statute of Limitations

139. KBR's claims were presented to the United States from early 2003 to 2005 and possibly later.

140. The United States' claims against KBR are timely for the following reasons:

(a) KBR agreed in writing that for the purpose of calculating the statute of limitations, laches, or any similar time limitation on the United States' claims here, the time period from August 4, 2008 to March 31, 2012 would be excluded. The United States' claims are therefore timely either because they are

within the applicable six-year limitations period after excluding the agreed upon period, or because they are within the three-year limitations period following the date when the facts material to the Government's right of action were known or reasonably should have been known by the official charged with the responsibility to act, taking into consideration the agreed upon excluded period.

(b) The statute of limitations was suspended by the Wartime Suspension of Limitations Act, 18 U.S.C. § 3287, until five years after the termination of hostilities in Iraq and Afghanistan by a Presidential proclamation, with notice to Congress, or by a concurrent resolution of Congress, which events have yet to occur.

141. The United States' claims against La Nouvelle and First Kuwaiti are timely for the following reasons:

(a) La Nouvelle and First Kuwaiti were outside the United States for all or most of the period from 2003 to the present. The United States' claims are therefore timely because they are within any applicable three-or six-year limitations period after excluding the time these defendants were outside the United States.

(b) The statute of limitations was suspended by the Wartime Suspension of Limitations Act, 18 U.S.C. § 3287, until five years after the termination of hostilities in Iraq and Afghanistan by a Presidential proclamation, with notice to Congress, or by a concurrent

resolution of Congress, which events have yet to occur.

COUNT I

Anti-Kickback Act, 41 U.S.C. §§ 53 and 55 (now codified at 41 U.S.C. §§ 8702 and 8706) Against KBR, La Nouvelle, and First Kuwaiti

142. The United States realleges paragraphs 1 through 141.

143. KBR, acting through Seamans, Mazon, and Martin and in violation of the Anti-Kickback Act, 18 U.S.C. §§ 53 and 55 (now codified at 18 U.S.C. §§ 8702 and 8706), knowingly (a) solicited, accepted, or attempted to accept kickbacks from La Nouvelle and First Kuwaiti in connection with subcontracts awarded to La Nouvelle and First Kuwaiti relating to LOGCAP III, or (b) included the amount of the kickbacks provided or offered by La Nouvelle and First Kuwaiti in claims for payment under LOGCAP III. At all times relevant to this Count, Seamans, Mazon, and Martin were acting with apparent authority and within the scope of their employment with KBR.

144. La Nouvelle, acting through Hijazi and others and in violation of the Anti-Kickback Act, 18 U.S.C. §§ 53 and 55 (now codified at 18 U.S.C. §§ 8702 and 8706), knowingly (a) provided, attempted to provide, or offered kickbacks to Seamans and Mazon in connection with subcontracts obtained from KBR relating to LOGCAP III, or (b) included the amount of those kickbacks in the subcontract price and in claims for payment under those subcontracts. At all times relevant to this Count, Hijazi and others acting on behalf of La Nouvelle were acting with apparent authority and

within the scope of their employment with La Nouvelle.

145. First Kuwaiti, acting through Al-Absi and others and in violation of the Anti-Kickback Act, 18 U.S.C. §§ 53 and 55 (now codified at 18 U.S.C. §§ 8702 and 8706), knowingly (a) provided, attempted to provide, or offered kickbacks to Martin in connection with subcontracts obtained from KBR relating to LOGCAP III, or (b) included the amount of those kickbacks in the subcontract price and in claims for payment under those subcontracts. At all times relevant to this Count, Al-Absi and others acting on behalf of First Kuwaiti were acting with apparent authority and within the scope of their employment with First Kuwaiti.

146. As a result of their knowing violations of the Anti-Kickback Act, KBR, La Nouvelle, and First Kuwaiti are severally liable for civil penalties in the amount of twice the amount of the kickbacks involved in their violations plus $11,000 for each occurrence of prohibited conduct.

COUNT II

False Claims Act, 31 U.S.C. § 3729(a)(1) (2000) Against KBR, La Nouvelle, and First Kuwaiti

147. The United States realleges paragraphs 1 through 141.

148. KBR, La Nouvelle, and First Kuwaiti knowingly presented, or caused to be presented, to an officer or employee of the United States or a member of the Armed Forces, false or fraudulent claims for payment or approval, in violation of the 31 U.S.C. § 3729(a)(1), by submitting false claims for costs incurred under subcontracts that were awarded other

than on the basis of fair competition and merit, and which were inflated by kickbacks or were otherwise unallowable under LOGCAP III.

149. As a result of these false or fraudulent claims, the United States paid KBR and suffered damages to be determined at trial. Under the False Claims Act, the United States is entitled to 3 times the amount of damages sustained by the Government plus civil penalties of $5,500 to $11,000 for each violation.

COUNT III

False Claims Act, 31 U.S.C. § 3729(a)(1)(B) (2009) Against KBR, La Nouvelle, and First Kuwaiti

150. The United States realleges paragraphs 1 through 141.

151. KBR, La Nouvelle, and First Kuwaiti knowingly made, used, or caused to be made or used, false records or statements material to false or fraudulent claims, in violation of 31 U.S.C. § 3729(a)(1)(B), by falsifying records and statements to give the appearance that KBR's claims were for reasonable costs incurred on subcontracts that were awarded on the basis of fair competition and merit, when in fact they were influenced by kickbacks and the costs claimed were inflated by kickbacks or were otherwise unallowable under LOGCAP III.

152. As a result of these false or fraudulent claims, the United States paid KBR and suffered damages to be determined at trial. Under the False Claims Act, the United States is entitled to 3 times the amount of damages sustained by the Government plus civil penalties of $5,500 to $11,000 for each violation.

COUNT IV

False Claims Act, 31 U.S.C. § 3729(a)(3) (2000) Against KBR and La Nouvelle

153. The United States realleges paragraphs 1 through 141.

154. KBR conspired with Hijazi and La Nouvelle to defraud the Government by getting false or fraudulent claims allowed or paid.

155. By reason of the defendants' conspiracy, the United States suffered damages to be determined at trial. Under the False Claims Act, the United States is entitled to 3 times the amount of damages sustained by the Government plus a civil penalty of $5,500 to $11,000 for each violation.

COUNT V

False Claims Act, 31 U.S.C. § 3729(a)(3) (2000) Against KBR and First Kuwaiti

156. The United States realleges paragraphs 1 through 141.

157. KBR conspired with Al-Absi and First Kuwaiti to defraud the Government by getting false or fraudulent claims allowed or paid.

158. By reason of the defendants' conspiracy, the United States suffered damages to be determined at trial. Under the False Claims Act, the United States is entitled to 3 times the amount of damages sustained by the Government plus a civil penalty of $5,500 to $11,000 for each violation.

COUNT VI

Common Law Fraud
Against KBR, La Nouvelle, and First Kuwaiti

159. The United States realleges paragraphs 1 through 141.

160. KBR, La Nouvelle, and First Kuwaiti made material misrepresentations or concealed material facts that induced the Government to pay amounts that were unallowable under LOGCAP III.

161. KBR, La Nouvelle, and First Kuwaiti are liable for damages in an amount to be determined at trial.

COUNT VII

Breach of Contract
Against KBR

162. The United States realleges paragraphs 1 through 141.

163. LOGCAP III permitted KBR to bill the Government only for its allowable costs under the contract. To be allowable, costs must be incurred, reasonable in amount, allocable to the contract, and not otherwise unallowable under applicable statutes and regulations. *See* FAR.52.216-7(a) ("The contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this contract.") (incorporated into LOGCAP III).

164. KBR claimed costs incurred in connection with subcontracts with La Nouvelle and First Kuwaiti,

as identified in this Complaint, that were not allowable for the reasons alleged above.

165. By reason of KBR's breach, the United States suffered damages in an amount to be determined at trial.

COUNT VIII

Unjust Enrichment
Against La Nouvelle and First Kuwaiti

166. The United States realleges paragraphs 1 through 141.

167. La Nouvelle and First Kuwaiti were unjustly enriched by the amounts KBR paid them in excess of their reasonable and allowable costs under the subcontracts and in the amounts of their profits under subcontracts procured by kickbacks.

168. La Nouvelle and First Kuwaiti are liable to the United States in the amounts they were unjustly enriched.

PRAYER FOR RELIEF

WHEREFORE, plaintiff United States prays for judgment against KBR, La Nouvelle, and First Kuwaiti as follows:

a. Under Count I (Anti-Kickback Act) against KBR, La Nouvelle, and First Kuwaiti, severally, civil penalties in the amount of twice the amount of the kickbacks involved in each of their violations plus $11,000 for each occurrence of prohibited conduct;

b. Under Counts II, III, IV, and V (False Claims Act) against KBR, La Nouvelle, and First Kuwaiti, jointly and severally, 3 times the

amount of damages sustained because of the acts of the defendants, plus civil penalties as allowed by law;

c. Under Count VI (common law fraud) against KBR, La Nouvelle, and First Kuwaiti, jointly and severally, for the amounts the defendants caused the United States to pay due to their fraudulent acts and otherwise as allowed by law;

d. Under Count VII (breach of contract) against KBR, damages in the amount of KBR's claims for unreasonable or otherwise unallowable costs under LOGCAP III paid by the Government;

e. Under Count VIII (unjust enrichment) against La Nouvelle and First Kuwaiti for the amounts by which each was unjustly enriched; and

f. Such other relief as the Court may deem just and proper, together with interest, costs, and the disbursements of this action.

Respectfully submitted,

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Dated: January 6, 2014

RELATOR'S ORIGINAL COMPLAINT (DECEMBER 20, 2006)

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

UNITED STATES *ex rel.* CONYERS,

Qui Tam Plaintiff,

v.

HALLIBURTON CO., KELLOGG BROWN & ROOT, INC., and KELLOGG BROWN AND ROOT SERVICES, INC.,

Defendants.

No. 12-4095

H-06-4024

COMPLAINT

1. This is an action under the False Claims Act ("FCA"), 31 U.S.C. § 3729-32 (2000), regarding the Defendants' submission of false claims to the U.S. Army (the "Army"). The Defendants received an Army contract to provide troop support in Iraq (the "LogCAP Contract," or "LogCAP"). Among other things, they:

- used morgue trucks that contained decayed human remains to store and transport ice to U.S. soldiers (ice which was used in refreshments);

- took kickbacks from vehicle suppliers; and
- hired prostitutes as staff, and billed the expense to the Army.

2. Qui Tam Plaintiff Bud Conyers was a civilian truck driver working under the LogCAP Contract. He has direct and independent knowledge of the information on which these allegations are based. Defendants' actions grossly violated the terms of the LogCAP Contract, and other applicable law. They nevertheless certified to the Army, with their payment requests and otherwise, that they had performed their contract requirements properly. These claims for payment to the Army thus were false and fraudulent. The Qui Tam Plaintiff complained to Defendants repeatedly about their failure to abide by health and safety standards, in particular regarding transporting, in morgue trucks, ice that was consumed by the troops. Conyers suffered in the terms and conditions of his employment as a result of his investigation of this fraud. The Defendants harassed him, stopped paying him, and then terminated his employment.

PARTIES

3. Qui Tam Plaintiff Bud Conyers ("Conyers") is a citizen of the United States, now domiciled in Enid, Oklahoma. He served in the U.S. Army from 1987 to 1989, and then went to school on the G.I. Bill. He drove trucks from 1994 until 2005. Hoping to help the war effort in Iraq, he joined Defendants in 2003 as a truck driver and convoy commander. His address is 2318 N. Washington, Enid, Oklahoma 73701.

4. Defendant Halliburton Company ("Halliburton") is a publicly-traded company incorporated in Delaware.

It wholly owns all business entities known as Kellogg Brown and Root or KBR, and did so before, during and after their reorganization under Chapter 11. Halliburton's principal places of business are Suite 200, 1150 18th St., N.W., Washington, D.C. 20036 and 5 Houston Center, 1401 McKinney, Houston, Texas 77010.

5. Defendant Kellogg Brown & Root, Inc. ("KBR Inc.") and Defendant Kellogg, Brown & Root Services, Inc. ("KBR Services") are contractors under the LogCAP Contract, as explained further below. Their address is 5 Houston Center, 1401 McKinney, Houston, Texas 77010. KBR Inc. and KBR Services employ approximately 60% of Halliburton's total staff.

Collectively, Halliburton, KBR Inc. and KBR Services are referred to as the Defendants. Together, KBR Inc. and KBR Services are referred to as KBR.

JURISDICTION AND VENUE

6. This action arises under 31 U.S.C. § 3729 *et seq*. Therefore, this is a case or controversy arising under the laws of the United States. Hence there is subject matter jurisdiction under 28 U.S.C. § 1331 (2000).

7. This action may be brought in this judicial district under 31 U.S.C. § 3732(a) (2000) because, *inter alia,* one or more of the Defendants can be found or transacts business in this judicial district, and one or more of the acts prescribed by *id. §* 3729 occurred in this judicial district.

ALLEGATIONS

8. In 2001, the U.S. Army Corps of Engineers awarded a 10-year contract to KBR under the U.S. Army's Logistics Civil Augmentation Program. This is the LogCAP Contract.

9. The U.S. Army Field Support Command ("FSC") administers the LogCAP contract. FSC is headquartered in Rock Island, IL. FSC's address is 1 Rock Island Arsenal, Rock Island, IL 61229-6000.

10. LogCAP is Contract No. DAAA09-02-D-0007. ("DAAA09" is a prefix referring to the FSC office in Rock Island.) LogCAP is a 10-year Task Order contract that calls for the contractor to provide a wide range of logistical services to the U.S. Army, including billeting, food, power, waste management, transport, and water and ice.

11. On information and belief, LogCAP was awarded to Kellogg Brown & Root Services, then an unincorporated division of Defendant KBR Inc., and later transferred to Defendant KBR Services.

12. Defendants KBR Inc. and KBR Services have submitted LogCAP claims to U.S. Government employees at FSC (and other locations) that FSC received within this judicial district. Defendant Halliburton caused such claims to be submitted. For the reasons stated above and below, these claims were false and fraudulent.

13. In 2003, Qui Tam Plaintiff Bud Conyers went to work in Kuwait and Iraq for KBR, so that he could earn money for his family, and help his country in the war effort.

14. Conyers worked for KBR's Theater Transportation Mission, which provides transportation in support of the U.S. forces in Kuwait and Iraq. He worked as a truck driver and convoy commander. Despite exhaustive searches, Relator does not have access to the Task Orders that are part of the Theater Transportation Mission because they are in the exclusive possession and control of Defendants.

I. Ice Consumed by U.S. Troops Delivered in Morgue Trailers

15. In March 2003, soldiers from the U.S. Army's 54th Quartermaster Company (the "54th"), of Fort Lee, VA, comprised the Army's only active duty Mortuary Affairs unit. That month, when the U.S. occupation of Iraq began, the 54th deployed to Kuwait, Iraq and Afghanistan.

16. When the 54th arrived in the combat theater, two teams branched off to support combat divisions heading toward Baghdad, Iraq. Both teams also established temporary internment cemeteries for deceased Iraqis.

17. After U.S. forces occupied Baghdad in April 2003, the teams from the 54th remained in the area. They assisted in the recovery of human remains from battle.

18. The teams from the 54th employed refrigerated trailers to transport remains to burial sites. Refrigerated vehicles, whether for this purpose or for other purposes, were known as "reefers."

19. The proper disposal of human remains is a very serious matter, not only for cultural and religious reasons, but also for reasons of health and safety.

According to the U.S. Army Center for Health Promotion and Preventive Medicine's Technical Guide:

> Contact with whole or part human remains carries potential risks associated with pathogenic microbiological organisms that may be present in human blood and tissue. Infectious conditions and pathogens in the recently deceased include —
>
> - bloodborne pathogens such as hepatitis B virus (HBV), hepatitis C Virus (HCV), hepatitis D virus (HDV), hepatitis E virus (HEV) and human immunodeficiency virus (HIV);
> - tuberculosis;
> - group A streptococcal infection;
> - gastrointestinal organisms;
> - agents that cause transmissible spongiform encephalopathies such as Creutz Jakob disease; and
> - possibly meningitis and septicemia (especially meningococcal).
>
> * * *
>
> The primary ways to protect personnel who handle human remains against infectious diseases are —
>
> - use of appropriate personal protective equipment,
> - observance of safety, industrial hygiene, and infection control practices described in this TG [Technical Guide].

"Guidelines for Protecting Mortuary Affairs Personnel from Potentially Infectious Material," TG 195 (October 2001).

20. According to U.S. Federal Motor Carrier Safety Regulations, once a trailer is used to transport human remains, it can never be used for other purposes. The Army has adopted this rule.

21. The Army and the U.S. Department of Defense have promulgated numerous rules regarding health and safety. Many of these rules were incorporated in the LogCAP Contract, and were binding on the Defendants. Under these health and safety rules, the Defendants were not permitted to use mortuary trailers that had transported human remains to deliver supplies to U.S. troops. This included trailers that the teams from the 54th had employed.

22. Halliburton's "Code of Business Conduct: Health, Safety and Environment," — which the Board of Directors approved on May 21, 2003, and which explicitly applies to KBR — states:

> The Company will comply with all applicable Laws and relevant industry standards of practice concerning protection of health and safety of its Employees . . . Protection of health rand] safety . . . is a primary goal of the Company and the management of the Company shall take such actions as are reasonable and necessary to achieve such goal and carry out this Policy.

23. The Defendants disregarded applicable health and safety rules by hiring and using mortuary trailers to deliver supplies to U.S. troops, and submitting claims under the LogCAP Contract for the cost of such

to the Army. As a result, those claims were false and fraudulent.

24. In addition, the Defendants followed none of the Army rules regarding the protection of personnel exposed to human remains. Nor did KBR follow Army rules governing the disinfection of vehicles or equipment containing such remains.

25. Conyers discovered the Defendants' misuse of mortuary trailers in a particularly unpleasant manner. On or about June 16, 2003, while working under the LogCAP Contract, Conyers assisted LogCAP convoy commander Wallace Wynia, David Milk and a half-dozen other LogCAP drivers in the repair of the engine of a truck — "reefer" [refrigerated] Trailer R-89 — that had been inoperative for two weeks.

26. After about six hours of work, Conyers and the others got the engine running. They then wanted to check the trailer, to make sure the cooling unit worked. They opened the trailer door to a gruesome discovery. Inside, they found 15 dead Iraqis in various stages of decomposition, as well as body parts and unidentifiable human matter on the floor. The bodies had been rotting in heat in excess of 120°, for approximately two weeks.

27. Since this vehicle was a morgue trailer, the Defendants were supposed to send it to an Army base in Kuwait, for continued use as such. Instead, the morgue trailer went to a Public Warehousing Company ("PWC") facility, for use by the Defendants under the LogCAP contract — specifically, to deliver ice to U.S. troops.

28. As noted above, under the LogCAP contract, KBR delivers various supplies to Army bases and

other U.S. facilities in Iraq. Among these supplies is ice made from drinking water. U.S. troops in Iraq consume such ice in large quantities, to cool beverages. KBR uses "reefer" vehicles to keep this ice frozen as it is delivered to U.S. facilities in Iraq. This is sometimes referred to as "potable ice" or "edible ice," although of course it is no longer potable or edible after being transported in a morgue trailer.

29. In the case of Trailer R-89, an Army mortuary team unloaded the Iraqi bodies at the PWC facility. A KBR foreman ordered Trailer R-89 to an "ice center," where it was loaded with "potable" ice. Trailer R-89 then delivered that ice for consumption by U.S. soldiers. After this run, KBR kept the contaminated trailer in circulation for various cargo, including more "potable" ice.

30. KBR's Project Manager and Deputy Project Manager covered up the Trailer R-89 incident. Earlier, two KBR employees had been injured while joy-riding a Blackhawk helicopter. Wynia and convoy commander Jeff Allen did not want those employees fired, and wanted KBR to pay the employees (at taxpayer expense) during their recovery. On information and belief, Wynia and Allan made a deal with two KBR supervisors, Ely and Ducksbury, that they would not tell anyone about KBR's practice of transporting "potable" ice on morgue trucks if KBR would retain and pay those two injured employees during their recovery. Conyers overheard Ely and Wynia discussing this deal when Conyers and other witnesses to the Trailer R-89 incident were called to Wynia's office.

31. The Trailer R-89 incident was far from isolated. Conyers tried to stop the Defendants and their

suppliers from loading "potable" ice onto morgue trucks at least six times after the grisly June 2003 incident.

32. More than two months after the initial incident, as reported in Allen's August 31 mission log, Trailer R-89 was still being used to transport "potable" ice. Of the 5,000 pounds loaded onto the trailer, "approx. 1,800 pounds" of the "bio-contaminated ice" was used, according to a signed note written in a log.

33. Conyers repeatedly filed complaints with KBR's Internal Affairs Office, but the awful practice continued. Conyers and a colleague even took pictures to substantiate what was happening. Conyers' boss found out, got angry with Conyers, and confiscated the pictures (but not the negatives).

34. The claims that the Defendants submitted under the LogCAP contract for the transportation of items in refrigerated vehicles were false or fraudulent, because the Defendants certified compliance with applicable rules and contract provisions, but *(inter alia)* KBR did not comply with the rules forbidding the use of mortuary trucks to deliver other items, the rules governing the protection of persons exposed to human remains, and the rules governing cleaning and cleanliness of vehicles and equipment.

II. Kickbacks on Trucks

35. One of Conyers' first bosses, Willie Dawson, took kickbacks from leasing companies for trucks, trailers and equipment. To add insult to injury, Dawson was taking the kickbacks regardless of whether these items worked.

36. For example, KBR has a fleet of around 200 "reefer" trailers to transport food and ice, but only around 50 ever worked. KBR submitted claims to the Army for all 200, however, so that Dawson and others could receive their kickbacks on all 200.

37. This resulted in false and fraudulent claims to the Government, for several reasons. *Inter alia,* the cost of the kickback was incorporated in the leasing company's bill to KBR, and KBR's bill to the Government. In addition, because of the billing for the inoperative vehicles, the leasing companies billed approximately four times as much as the bill would have been for operative vehicles, and this, in turn, increased KBR's bill to the Government. Moreover, this arrangement caused unnecessary repair bills to be submitted to the Government. Furthermore, the resulting inefficiency meant that the overall cost of the mission was increased.

38. Conyers complained to his immediate foreman and then to the local leasing company about these kickbacks. The local leasing company manager offered Conyers the same deal that Conyers' KBR supervisor was getting: "a kickback on all equipment that hits the ground, good or bad."

39. Conyers rejected the bribe.

40. Rob Nuble was another KBR employee taking kickbacks of this kind. At Camp Anaconda, Nuble took kickbacks from the supplier of flatbed trucks billed for use there. Nuble came up with a new twist-he charged the Army for more trucks than were really delivered to Camp Anaconda, and took kickbacks on the phantom trucks. Nuble actually bragged about this to Conyers.

41. Conyers filed complaints about the kickbacks with KBR's Internal Affairs Office. Nothing changed.

III. Prostitution Billed to the U.S. Government

42. Conyers initially was assigned to work for KBR in Kuwait. In Kuwait, Conyers observed that women from Bosnia and Kosovo who worked for KBR served as prostitutes for male KBR managers. Conyers learned that the managers had hired these women as LogCAP employees, billing their salaries to the Army under the LogCAP Contract. The women did little if any actual work under LogCAP, however. Their primary function was simply to service the KBR managers. KBR even paid for their hotel rooms. Conyers reported this to KBR's Internal Affairs Office, again to no effect.

43. Needless to say, providing prostitution services to KBR management is not authorized under the LogCAP Contract. The employment of prostitutes, at taxpayer expense, inflated the bills that the Defendants submitted under the LogCAP Contract to U.S. Government employees.

IV. Retaliation

44. Despite threats from his supervisor, Conyers repeatedly filed complaints to KBR's Internal Affairs Office.

45. On October 24, 2003, Conyers told Jim Coin, KBR's Employee Relations Manager for LogCAP, about yet another morgue trailer having a dead body in it (this one at Cedar II). Conyers was relieved of his LogCAP duties the next day.

46. KBR stopped paying Conyers. In fact, he did not receive any of his salary after August 2003. When he complained to a supervisor, he was told that this is what happens when you are not a "team player."

47. KBR did not reimburse Conyers for the $4000 replacement prosthesis that Conyers had to buy when his artificial leg was broken on the job in Iraq. He also lost all of his personal belongings in Camp Anaconda, including his clothes, his replacement artificial leg, and holiday presents for his family.

48. KBR fired him on December 28, 2003, ostensibly for "failure to remain at his post" in Safir al-Dana.

49. Conyers reported the incidents to the Army's Criminal Investigative Division in Kuwait.

First Claim —
FALSE CLAIMS (FCA § 3729(a)(1)

50. All of the preceding allegations are incorporated herein.

51. KBR has billed the Government under the LogCAP Contract each month, and will continue to do so during the pendency of this lawsuit. Each of these LogCAP claims relating to the shipping of edible ice in morgue trailers, taking kickbacks on trucks and billing for more working trucks than there were, and billing prostitutes as personnel, beginning no later than 2003 and continuing during the pendency of this lawsuit, is a false or fraudulent claim, for the reasons alleged above. On information and belief, all of these false claims were presented for payment or approval to employees of the U.S. Government. KBR did so with actual knowledge of the falsity of each claim, reckless

disregard for the truth and falsity of each claim, and deliberate indifference.

52. Halliburton caused such false and fraudulent claims to be submitted, for the reasons alleged above.

53. Defendants thus knowingly presented, or caused to be presented, to an officer or employee of the United States Government or a member of the Armed Forces of the United States, false or fraudulent claims for payment or approval. Defendants knowingly made false representations in order to obtain a benefit that they did not provide.

Second Claim —
FALSE STATEMENTS (FCA § 3729(a)(2))

54. All of the preceding allegations are incorporated herein.

55. The Defendants knowingly made, used or caused to be made or used numerous false records or statements to get the false or fraudulent claims paid or approved. For instance, Defendants made false statements regarding the source of reefer trailers, the actual cost of reefer trailers, and the number of reefer trailers in use.

56. The Defendants thus knowingly made, used, or caused to be made or used, false records or statements to get false or fraudulent claims paid or approved by the Government. Defendants knowingly made, used or caused to made or used, such false records or statements in order to obtain a benefit that they did not provide.

WHEREFORE, for each of the first two claims, the Qui Tam Plaintiff requests the following relief from the Defendants:

A. Three times the amount of damages that the Government sustains because of the acts of the Defendant;

B. A civil penalty of $11,000 for each violation;

C. An award to the Qui Tam Plaintiff for collecting the civil penalties and damage;

D. Award of an amount for reasonable expenses necessarily incurred;

E. Award of the Qui Tam Plaintiff s reasonable attorneys' fees and costs;

F. Interest; and

G. Such further relief as the Court deems just.

Third Claim —
RETALIATION (FCA § 3730(h))

57. All of the preceding allegations are incorporated herein.

58. For the reasons alleged above, the Qui Tam Plaintiff was an employee discharged, suspended, threatened, harassed, and in other manners discriminated against in the terms and conditions of employment by his employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of a False Claims Act. This included his investigation for this action.

WHEREFORE, for this claim, the Qui Tam Plaintiff requests the following relief from each of the Defendants, jointly and severally:

A. All relief necessary to make the Qui Tam Plaintiff whole;

B. An order providing for reinstatement with the same seniority status that the Qui Tam Plaintiff would have had but for the discrimination, or in the alternative, front pay;

C. Two times the amount of back pay and front pay;

D. Interest on the back pay and front pay;

E. Compensation for special damages sustained as a result of the discrimination, including but not limited to litigation costs and reasonable attorneys fees;

F. Pre-judgment and post-judgment interest; and

G. Such further relief as the Court deems just.

Fourth Claim —
BREACH OF CONTRACT

59. All of the preceding allegations are incorporated herein.

60. KBR entered into an employment contract with Conyers. There was adequate consideration for the contract.

61. Conyers performed under the contract.

62. KBR breached the employment contract by terminating it prematurely.

63. KBR's actions were without lawful cause or justification.

64. KBR's breach of the contract caused and continues to cause Conyers harm, *i.e.,* loss of the money due to him under his employment contract.

WHEREFORE, for this claim, the Qui Tam Plaintiff requests the following relief from each of the Defendants, jointly and severally:

A. Ail relief necessary to make the Qui Tam Plaintiff whole;

B. An order providing for reinstatement with the same seniority status that the Qui Tam Plaintiff would have had but for the discrimination, or in the alternative, front pay;

C. Back pay;

D. Interest on the back pay and front pay;

E. Pre judgment and post judgment interest; and

F. Such further relief as the Court deems just.

JURY REQUEST

The Qui Tam Plaintiff requests a jury for all issues that may be tried by a jury.

Respectfully submitted,

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (*SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.*)

I. (a) Plaintiffs

United States *ex rel.* Bud Conyers

Defendants

Halliburton Co., Kellogg Brown & Root, Inc.

(b)

County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES) U.S.

(c)

Attorneys (Firm Name, Address, and Telephone Number

Phill Hilder, Alan Grayson

II. Basis of Jurisdiction (Place an "X" in One Box Only)

☒ U.S. Government Plaintiff

III. Citizenship of Principal Parties (For Diversity Cases Only) (Place an "X" in One Box for Plaintiff and One Box for Defendant)

☒ Citizen of Another State

IV. Nature of Suit (Place an "X" in One Box Only)

Other Statutes

☒ 890 Other Statutory Actions

V. Origin (Place an "X" in One Box Only)

☒ Original Proceeding

VI. Cause of Action

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

31 U.S.C. § 3729 *et seq.*

Brief description of cause:

False Claim Act case on kickbacks & Fraud.

VII. Requested In Complaint:

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes

[. . .]

Date: 12/18/06