IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, *ex rel.* LARRY HAWKINS, *et al.*, Plaintiffs, v. MANTECH INTERNATIONAL CORPORATION, *et al.*, Defendants.	CIVIL ACTION NO. 15-02105(ABJ)

DEFENDANTS' MOTION TO DISMISS THE SECOND AMENDED COMPLAINT

Defendants ManTech International Corporation and ManTech Telecommunications and Information Systems Corporation ("ManTech"), through counsel, respectfully move this Honorable Court for entry of an order dismissing all claims asserted against ManTech in the Second Amended Complaint with prejudice pursuant to Federal Rules of Civil Procedure 9(b), 12(b)(1), and 12(b)(6). In support of this Motion, ManTech incorporates the accompanying memorandum of law, declaration, and exhibits thereto.

WHEREFORE, ManTech respectfully requests that the Court dismiss the Second Amended Complaint with prejudice.

Respectfully submitted,

/s/ Roderick L. Thomas
Roderick L. Thomas (D.C. Bar # 433433)
P. Nicholas Peterson (D.C. Bar # 982276)
Wiley Rein LLP
1776 K Street, NW
Washington, DC 20006
Tel: (202) 719-7000
Fax: (202) 719-7049
rthomas@wileyrein.com

ppeterson@wileyrein.com

Counsel for Defendants ManTech International Corporation and ManTech Telecommunications and Information Systems Corporation

Dated: January 4, 2019

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MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS THE SECOND AMENDED COMPLAINT

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P. Nicholas Peterson (D.C. Bar # 982276)
Wiley Rein LLP
1776 K Street, NW
Washington, DC 20006
Tel: (202) 719-7000
Fax: (202) 719-7049
rthomas@wileyrein.com
ppeterson@wileyrein.com

Counsel for Defendants ManTech International Corporation and ManTech Telecommunications and Information Systems Corporation

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Defendants ManTech International Corporation and ManTech Telecommunications and Information Systems Corporation ("ManTech") hereby submit this Memorandum of Law in support of their accompanying Motion to Dismiss the Second Amended Complaint in its entirety pursuant to Federal Rules of Civil Procedure 9(b), 12(b)(1), and 12(b)(6).

I. INTRODUCTION AND SUMMARY

This action arises out of the termination of five former employees—Larry Hawkins, William Randall Hayes, Clinton Sawyer, James Locklear, and Kent Nelson ("relators")—who were employed on an at-will basis by ManTech to perform maintenance and repairs on U.S. military vehicles in Kuwait pursuant to a U.S. Army contract. Almost one year after these mechanics were terminated, most for cause, they filed an employment action against ManTech in federal court. After a motion to dismiss had been fully briefed but not yet decided, they voluntarily dismissed that action. More than one year after that dismissal, relators returned with a sealed False Claims Act ("FCA") case alleging FCA, breach of contract, and human trafficking violations. The Government declined to intervene, and the case was unsealed. Relators then sought the Government's intervention in an amended complaint, but the Government, again, declined to intervene. After ManTech filed a motion to dismiss the First Amended Complaint, relators responded by seeking leave to file a Second Amended Complaint ("SAC"). The Government reviewed the Second Amended Complaint and, for the third time, declined to intervene. Relators' continuing efforts to reframe their employment case as a *qui tam* action are revealed by their undeveloped legal theories and scattershot allegations regarding ManTech's purported FCA and human trafficking violations. However, relators' attempt to conjure an FCA and human trafficking case out of garden-variety employment allegations fails for numerous reasons.

First, the allegations underpinning relators' FCA claims, to the extent they can be deciphered, are devoid of the "who, what, when, where, why, and how" required by Rule 9(b). For instance, even though the crux of an FCA claim is that a false certification was made to obtain money or property from the Government, relators fail to provide any detail, much less to the level of specificity required, as to how any of ManTech's allegedly false certifications were linked to any payments under the U.S. Army contract at issue. Substantively, relators' FCA claims fail because they seek to circumvent clear precedent of the Supreme Court holding that the FCA is not "an all-purpose antifraud statute" or "a vehicle for punishing garden-variety breaches of contract or regulatory violations." But attempting to shoehorn several immaterial obligations into a basis for FCA liability is precisely what relators seek to accomplish here.

Even obligations that at first appear to be more closely related to the U.S. Army contract at issue crumble upon inspection. Relators' allegation, for instance, that ManTech violated the FCA by using supposedly unqualified mechanics fails on multiple levels. Most notably, in their almost seventy-page SAC, relators do not allege even once that a single military vehicle was improperly maintained or repaired by ManTech's purported use of "unqualified" mechanics. Relators' allegations regarding unqualified mechanics are also foreclosed by the public disclosure bar because more than one year before relators filed this action, another unsealed *qui tam* case raised the same allegations in federal court.[1] In short, each of relators' FCA claims exhibit substantial deficiencies.

Second, relators' human trafficking allegations, which are styled as violations of the Trafficking Victims Protection Reauthorization Act ("TVPRA"), also fail to state a claim. As the

[1] The relator in that previous case apparently recognized the lack of merit of these allegations because, following the Government's decision not to intervene, he eventually moved to voluntarily dismiss the case without ever having served the complaint on ManTech. *See infra* n.22.

TVPRA is a criminal statute primarily aimed at protecting women and children from human trafficking, it is unsurprising that none of relators' allegations comes close to the level of plausibility required to state a claim under the civil remedy provision of the TVPRA. *See Muchira v. Al-Rawaf*, 850 F.3d 605, 618-19 (4th Cir. 2017), *as amended* (Mar. 3, 2017) ("Typically . . . 'forced labor' situations involve circumstances such as squalid or otherwise intolerable living conditions, extreme isolation . . . , threats of inflicting harm upon the victim or others . . . , and exploitation of the victim's lack of education and familiarity with the English language, all of which are 'used to prevent [vulnerable] victims from leaving and to keep them bound to their captors.'") (citation omitted). Relators voluntarily signed employment offer letters with ManTech in which they earned generous hourly wages for a 70-72 hour work week, not including additional pay for hardship and per diem, and some of the relators had previously been employed ***at the same military facility*** in Kuwait by other employers. Moreover, relators have failed to allege that ManTech took any action that elicited the so-called "forced labor."

Third, insofar as relators' TVPRA claims concern alleged physical injuries they suffered in Kuwait, such claims are barred as a jurisdictional matter by the Defense Base Act ("DBA"). The DBA provides the exclusive remedy for employees of civilian contractors who are injured while working under government contracts performed outside the United States. Relators cannot sidestep their failure to avail themselves of that mandatory statutory scheme by recasting their DBA claims as TVPRA claims. Such an attempt at "artful pleading" has been soundly rejected by the Supreme Court of the United States.

In short, the SAC fails to satisfy basic pleading requirements and does not state any valid claims against ManTech. Accordingly, the SAC should be dismissed with prejudice under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim, under Federal Rule of Civil Procedure

9(b) for failure to plead fraud with particularity, and under Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction.

II. BACKGROUND

ManTech was awarded the Contractor Logistics Sustainment and Support Services ("CLSS") contract, No. W56HZV-12-C-0127, in May 2012. SAC (ECF No. 30) ¶ 5. Under the contract, ManTech was required to maintain and repair mine resistant ambush protected ("MRAP") vehicles and other critical warfighting vehicles at various locations in the Middle East, including at the Kuwait Maintenance Sustainment Facility ("KMSF"). *See id.* The Solicitation for the contract explicitly set forth six "Contract Performance Metrics":

- Maintain a 90% Fully Mission Capable Operational Readiness Rate (ORR);
- Sustain a 95% compliance to repair standards;
- Repair cycle times not to exceed 15 days non-mission capable over a 60 day period;
- Purchase order wait time not to exceed a 30 day average (over a 90 day period);
- Not more than 5% of systems repaired will be returned for the same fault within 200 hours;
- Class IX parts repaired and returned to stock or disposed of within 90 days of removal 95% of the time.

Solicitation Number W56HZV-11-R-0181 (May 16, 2011) at 3-4 (hereinafter "Solicitation").[2] While ManTech provided vehicle maintenance and repair services at the KMSF, other

[2] Although relators state that they "have purchased what they reasonably believe is a publicly-available copy of the Contract (albeit without exhibits)[,]" SAC ¶ 23 n.1, they still cite liberally to the Solicitation throughout the SAC. *See* SAC ¶¶ 140, 272, 274. Even though the Solicitation was not attached to the SAC, it is properly considered on a motion to dismiss because it is "referred to in the complaint and integral to [relators'] claim[s]." *Econ. Research Servs., Inc. v. Resolution Econ., LLC*, 208 F. Supp. 3d 219, 227 (D.D.C. 2016) (citation omitted). A copy of the Solicitation is available at https://www.fbo.gov/utils/view?id=8068db236bc752a6c7c2ba1df943439e. Of course, the Solicitation is not the actual contract and provisions included in a solicitation are not necessarily reflected in the resultant contract. As discussed *infra* in Section IV, Relators' failure to plead the actual contract requirements underscores the fatal deficiencies in the SAC. Moreover, even assuming the same obligations and provisions identified in the Solicitation were ultimately included in the operative CLSS contract, relators fail to state any claims.

contractors provided administrative, logistics, and related support to the government. *See, e.g.*, SAC ¶ 50.[3]

Relators are former at-will employees of ManTech who were employed to work primarily as mechanics at the KMSF. *See id.* ¶¶ 6, 12-16. Some of the relators had previously worked at the KMSF and were already in Kuwait when they were employed by ManTech. *See id.* ¶¶ 178, 181 ("Prior to working for ManTech, Hawkins worked for VSE Corporation . . . and Ranger Land Systems at the KMSF. . . . At ManTech's instruction, Hawkins left Kuwait to participate in ManTech's new employee training in the U.S."); *id.* ¶¶ 196, 199 ("Prior to working for ManTech, Hayes worked for subcontractors VSE and Ranger when SAIC was the prime contractor on MRAP maintenance and repair. . . . At ManTech's instruction, Hayes returned to the United States for training."); *id.* ¶ 205 ("Prior to working for ManTech, Sawyer was employed by VSE which was a subcontractor to ManTech's predecessor SAIC on the MRAP contract."). Before being employed by ManTech to work in Kuwait on the CLSS contract, each relator signed an offer letter and various addenda describing the terms of their employment. *Id.* ¶ 160.

Ultimately, relators Hayes, Nelson, Sawyer, and Locklear were terminated for cause in June 2013 because of unsatisfactory job performance. *Id.* ¶ 66. Relator Hawkins' employment relationship with ManTech ended in the summer of 2013 as well.[4] *Id.* ¶ 12. All told, relators spent less than one year working on the CLSS contract before their employment with ManTech ended.

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[3] Relators include allegations in the SAC concerning alleged "horrific . . . work conditions" at the KMSF in an attempt to support their "forced labor" claims. SAC ¶ 226; *see also id.* ¶¶ 226-49. However, relators do not identify any provision in the Solicitation or contract stating that ManTech was responsible for the KMSF, a U.S. Government facility, and the Solicitation makes clear that the contract is focused on the repair and maintenance of MRAP vehicles – not maintaining a facility. In any event, as discussed *infra* in Sections V and VI, relators' claims fail on both procedural and substantive grounds.

[4] The SAC is inconsistent as to the date of termination for the relators. At the beginning of the SAC, relator Hawkins alleges that his employment with ManTech ended in May *2015*. SAC ¶ 12.

Approximately one year later, relators filed a complaint in the U.S. District Court for the Eastern District of Virginia regarding their time on the CLSS contract. *See* Compl. (ECF No. 1), *Hayes v. ManTech Int'l Corp.*, No. 14-CV-546 (E.D. Va. filed May 13, 2014).[5] In that case, relators brought claims against ManTech for wrongful termination, breach of contract, defamation, tortious interference with prospective business advantage, and violations of the Fair Labor Standards Act. A motion to dismiss filed by ManTech was fully briefed, but before the Virginia district court issued a decision, relators voluntarily dismissed the action. *See* Notice of Voluntary Dismissal (ECF No. 16), *Hayes v. ManTech Int'l Corp.*, No. 14-CV-546 (E.D. Va. filed Sept. 11, 2014).

Just over one year after they dismissed their complaint in the Eastern District of Virginia, relators filed the present action under seal in December 2015. The original complaint alleged violations of the FCA, the TVPRA, and breach of contract. In September 2017, the Government elected not to intervene and this Court ordered the case unsealed. *See* Order dated Sept. 12, 2017 (ECF No. 15). Relators filed a First Amended Complaint on February 5, 2018. ECF No. 25. As it did with the original complaint, the Government declined to intervene in the First Amended Complaint. *See* Notice Regarding Relators' Proposed Am. Compl. (ECF No. 25) (filed Feb. 2, 2018). After Defendants filed a motion to dismiss the First Amended Complaint, *see* ECF No. 28, relators sought and were granted leave to file a Second Amended Complaint. *See* Minute Order dated Apr. 18, 2018. Relators filed a Second Amended Complaint on June 19, 2018. ECF No.

Later in the SAC, relators allege that four of them were terminated in May *2013*. SAC ¶ 66. It is clear, however, that all of the relators were terminated in 2013, as relators filed an employment action in 2014 stemming from their termination.

[5] The Court may take judicial notice of public court filings without converting the present Motion to a motion for summary judgment. *See, e.g.*, *Econ. Research Servs.*, 208 F. Supp. 3d at 227; *see also United States v. CVS Pharmacy, Inc.*, No. 15-CV-5518, 2018 WL 654289, at *3 (C.D. Cal. Jan. 31, 2018).

30. The Second Amended Complaint raises substantially similar FCA and TVPRA allegations against Defendants. As it has done twice before, the Government declined to intervene in the Second Amended Complaint because it concluded that that the Second Amended Complaint did not "state[] any new allegations necessitating a further investigation[.]" Notice Regarding Relators' Proposed Second Am. Compl. (ECF No. 33), at 1.

III. LEGAL STANDARD

Under Federal Rule of Civil Procedure 12(b)(6), "a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks and citation omitted). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.*; *see also Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) ("Factual allegations must be enough to raise a right to relief above the speculative level . . . ."). Although "the Court must assume [the] veracity of any well-pleaded factual allegations in the . . . complaint, conclusory allegations are not entitled to the assumption of truth." *United States ex rel. Conteh v. IKON Office Sols., Inc.*, 103 F. Supp. 3d 59, 63 (D.D.C. 2015) (alteration in original) (internal quotation marks and citation omitted). The Court must also disregard "legal conclusions cast in the form of factual allegations." *Kowal v. MCI Commc'ns Corp.*, 16 F.3d 1271, 1276 (D.C. Cir. 1994); *see also Iqbal*, 556 U.S. at 678.

"In ruling on a 12(b)(6) motion, a court may consider facts alleged in the complaint, documents attached to or incorporated in the complaint, matters of which courts may take judicial notice, and documents appended to a motion to dismiss whose authenticity is not disputed, if they are referred to in the complaint and integral to a claim." *Econ. Research Servs., Inc. v. Resolution Econ., LLC*, 208 F. Supp. 3d 219, 227 (D.D.C. 2016) (citation omitted).

IV. RELATORS HAVE FAILED TO STATE ANY CLAIMS UNDER THE FCA

In Counts I, II, III, and V, relators assert claims against ManTech under the False Claims Act. Although the legal theories upon which relators rely with respect to each Count are muddled, *see, e.g.*, Count V (alleging a claim pursuant to "31 U.S.C. §§ 3729(a)(1)(A), 3729(a)(1)(B) or Implied False Claim"),[6] relators' FCA claims appear to be based on ManTech's alleged noncompliance with statutory, regulatory, or contractual provisions regarding three issues: (i) mechanic and technician qualifications; (ii) the reporting of labor hours and the inputting of data into the SAMS-E system; and (iii) the TVPRA. All of relators' claims fail as a matter of law and should be dismissed.

A. Relators Have Failed to Plead with Particularity Under Rule 9(b)

Claims brought under the FCA are subject to the heightened pleading standard in Federal Rule of Civil Procedure 9(b), which provides that "[i]n alleging fraud . . . , a party must state with particularity the circumstances constituting fraud . . . ." Fed. R. Civ. P. 9(b); *see also Walsh v. JPMorgan Chase Bank, NA*, 75 F. Supp. 3d 256, 263 (D.D.C. 2014) (Jackson, J.). To satisfy this burden, a plaintiff must "state the time, place and content of the false misrepresentations, the fact[s] misrepresented . . . [,] what was retained or given up as a consequence of the fraud, and identify individuals allegedly involved in the fraud." *Conteh*, 103 F. Supp. 3d at 64 (internal quotation marks and citation omitted). Said differently, the complaint must "provide a defendant with notice of the who, what, when, where, and how with respect to the circumstances of the fraud." *Id.* (citation omitted). Rule 9(b) "serves several purposes, including ensuring that all defendants

[6] Much like in *Pencheng*, the "swirl of facts" in the SAC makes it "exceedingly difficult to determine which of the specific factual allegations regarding the Defendants' conduct are intended to support each count [and] . . . which legal theory underpins each count." *Pencheng Si v. Laogai Research Found.*, 71 F. Supp. 3d 73, 90 (D.D.C. 2014) (dismissing FCA claims in a relator's amended complaint). This provides yet another reason to dismiss the SAC.

[have] sufficient information to allow for preparation of a response." *Id.* (alteration in original) (internal quotation marks and citation omitted); *see also United States ex rel. Head v. Kane Co.*, 798 F. Supp. 2d 186, 193 (D.D.C. 2011) (Rule 9(b) also serves to "discourage the initiation of suits brought solely for their nuisance value, and [to] safeguard potential defendants from frivolous accusations of moral turpitude . . . .") (alteration in original) (internal quotation marks and citation omitted).

Despite this now being the ***third*** iteration of their complaint, relators have yet again failed to satisfy Rule 9(b)'s heightened pleading standard. Most glaringly, relators still fail to provide any detail, much less the requisite particularity, regarding how ManTech's alleged noncompliance caused the payment of money under fraudulent circumstances. There is not a single allegation in the SAC that connects any alleged false certification to any payments under the CLSS contract, nor do relators identify any key information such as who allegedly made these false certifications.[7] These pleading failures are fatal to relators' claim. *See United States ex rel. Folliard v. Hewlett-Packard Co.*, 272 F.R.D. 31, 35 (D.D.C. 2011) (dismissing FCA claim where the relator failed to plead, *inter alia*, "who made the false statements and when they were made"); *United States v. N. Adult Daily Health Care Ctr.*, 205 F. Supp. 3d 276, 294 (E.D.N.Y. 2016) (rejecting claim under false certification theory where the relators alleged only that the defendant expressly certified compliance with Department of Health rules and regulations, not that the defendant "submitted a *claim* in which it expressly certified such compliance") (emphasis in original).

[7] This is unsurprising considering that relators were mechanics and were not involved in the actual invoicing and payment process under the CLSS contract. The fact that relators' claims are based on speculation and innuendo is yet another reason why they have failed to satisfy the heightened pleading standard of Rule 9(b). *See, e.g.*, *United States ex rel. Folliard v. Hewlett-Packard Co.*, 272 F.R.D. 31, 36 (D.D.C. 2011) (dismissing FCA claim based on relator's "speculat[ion]" that the defendant misrepresented the country of origin of products sold to the government).

Moreover, although the previous complaint contained a few bare allegations concerning invoices—*see, e.g.*, ECF No. 26 at ¶ 193 (referring to, but not providing any detail regarding, alleged "false invoices submitted under Contract 1"); *id.* ¶ 195 (alleging that "ManTech made false claims under the Contract by submitting invoices for payment to the U.S." but not providing any further detail)—the SAC contains ***even less detail***. There are now ***zero allegations*** regarding the allegedly false invoices that ManTech submitted, much less the required detail regarding the content of those invoices, what was allegedly false about them, who submitted them, when they were submitted, or how the invoices allegedly caused the Government to pay ManTech under false pretenses. Similarly, relators do not provide any detail regarding their allegations that ManTech's alleged noncompliance caused the Government to award option years to ManTech. *See, e.g.*, SAC ¶ 32 ("Based on ManTech's representations that it had been in full compliance with the Contract, the U.S. did, in fact, exercise contract options . . . ."). Rule 9(b) requires a relator to state the "who, what, when, where, and how" of the alleged fraud, and relators have fallen well short of doing that here. *Conteh*, 103 F. Supp. 3d at 64; *see also United States ex rel. Hutchins v. DynCorp Int'l, Inc.*, No. 15-CV-355 (RMC), 2018 WL 4674577, at *12 (D.D.C. Sept. 28, 2018) (dismissing "vague . . . allegations . . . that [the defendant] submitted fraudulent invoices" for failure to plead with sufficient particularity).

A number of the allegations offered in support of relators' fraud claims are also made upon "information and belief." *See, e.g.*, SAC ¶ 47 ("On information and belief, ManTech managers altered timesheets that were completed by ManTech employees by either increasing or decreasing direct labor hours with knowledge that they would be reported to the U.S."); *id.* ¶ 131 ("On information and belief, ManTech hired persons who had engaged third-parties to take and pass the mechanic competency test."). In this Circuit, such pleading is permitted in a fraud case only in the

rare circumstance "when the information needed to make factual allegations is 'peculiarly within the knowledge of the opposing party'" and when the relator/plaintiff accompanies such an allegation with "a statement of the facts upon which the allegations are based." *Conteh*, 103 F. Supp. 3d at 66 (internal quotation marks and citation omitted); *see also id.* ("[T]his exception must be 'construed consistent with the purpose of Rule 9(b),' so that 'the filing of a complaint [is not] a pretext [used to] discover[ ] unknown wrongs.'") (internal quotation marks and citation omitted). Relators have made no such allegations here; thus, they have failed to satisfy Rule 9(b). *See id.*; *see also United States ex rel. Bogina v. Medline Indus., Inc.*, 809 F.3d 365, 370 (7th Cir. 2016) ("[I]t is because a public accusation of fraud can do great damage to a firm before the firm is exonerated in litigation (should the accusation prove baseless) that Rule 9(b) of the Federal Rules of Civil Procedure requires that 'in alleging fraud . . . a party must state with particularity the circumstances constituting fraud.' Allegations based on 'information and belief' thus won't do in a fraud case-for 'on information and belief' can mean as little as 'rumor has it that….'").

The deficiencies in the SAC do not stop there. Although relators have expanded the complaint to more than 70 pages, it is still devoid of sufficient particularity regarding the "who, what, when, where, and how" of numerous key allegations underlying their fraud claims. In addition to relators' continued failure to tie any of their allegations to any claims for payment or invoicing to the Government at all, the following are some representative examples of the other pleading deficiencies that remain in this latest iteration of the complaint:

Allegations	***Deficiencies***
¶ 47: "Depending on ManTech's needs, ManTech either overreported direct labor hours or underreported direct labor hours by encouraging its employees to mischaracterize direct labor hours as indirect labor hours (and vice versa). ***On information and belief***,	Relators do not identify, *inter alia*, who at ManTech allegedly undertook this conduct or when it occurred, what ManTech's alleged "needs" were, nor do they provide any details as to how the alleged "increasing or

ManTech managers altered timesheets that were completed by ManTech employees by either increasing or decreasing direct labor hours with knowledge that they would be reported to the U.S." (emphasis added)	decreasing direct labor hours" affected any payments under the CLSS contract.
¶ 53: "At the meetings with Army contracting officers that he attended, Hawkins witnessed ManTech managers deliberately lie to the U.S. government contracting officers about ManTech's efficiency in servicing the MRAP vehicles. . . . Hawkins witnessed ManTech claim, falsely, to the Army contracting officers, that ManTech was working far more efficiently than Ranger."	Despite claiming to have been present at "meetings," Hawkins does not identify, *inter alia*, exactly when these alleged meetings took place, who else was present, and who at ManTech made the alleged false statements. Nor does Hawkins provide any factual allegations whatsoever to tie the alleged misrepresentations regarding "efficiency" to any payments under the CLSS contract.[8]
¶ 58: "As a result of the manipulation of the time reported by ManTech to the Army and through oral reports made by ManTech managers in the presence of Hawkins to Army contracting officers at the meetings attended by Hawkins, Hawkins has direct knowledge that ManTech made material false statements to the United States in order to ensure payment under the Contract . . . ."	Despite claiming to have "direct knowledge," Hawkins does not identify, *inter alia*, who at ManTech allegedly made these "oral reports," when they occurred, to whom they were made, or the content of these alleged false statements. Nor does Hawkins provide any factual allegations whatsoever connecting the alleged unidentified "false statements" to any payments under the CLSS contract.
¶ 131: "***On information and belief***, ManTech hired persons who had engaged third-parties to take and pass the mechanic competency test." (emphasis added)	Relators do not identify, *inter alia*, who at ManTech allegedly undertook the conduct, who the "hired persons" were, who the "third-parties" were, or when this allegedly took place.
¶ 203: "When [Hayes] voiced his concern that he could be arrested and deported, ManTech instructed him that if he was concerned that he	Hayes does not identify who allegedly issued this instruction, when it was issued, or how it was allegedly communicated to him. Nor

[8] Relators' numerous allegations regarding ManTech's alleged "efficiency," *see, e.g.*, SAC ¶¶ 8, 48, 52-54, are also vague and highly subjective in nature and thus do not state an FCA claim. *See, e.g.*, *United States ex rel. Conteh v. IKON Office Sols., Inc.*, 103 F. Supp. 3d 59, 69 (D.D.C. 2015) ("[V]ague and conclusory allegations, absent any amplifying information to show that these allegations are anything more than unsubstantiated conjecture, fail to [satisfy Rule 9(b)]."); *United States v. Kellogg Brown & Root Servs., Inc.*, 800 F. Supp. 2d 143, 155 (D.D.C. 2011) ("[T]he FCA 'surely cannot be construed to include a run-of-the-mill breach of contract action that is devoid of any objective falsehood.'"). Moreover, relators ignore the six "Contract Performance Metrics" that were explicitly set forth in the Solicitation. *See supra* Section II. They do not allege that ManTech falsely certified compliance with any of these concrete performance metrics.

would be arrested he should confine himself to his apartment when he was not working."	does Hayes provide any factual averments linking these allegations to any payments under the CLSS contract.
¶ 226: "ManTech used intimidation and coercion to keep its employees in constant fear of being terminated and deported."	Relators do not identify who at ManTech allegedly undertook this conduct, when it occurred, or what alleged acts were taken against employees.
¶ 280: "***On information and belief***, ManTech's employment contracts with the other employees who worked on the Contract in Kuwait contained similar if not identical provisions." (emphasis added)	Relators do not identify, *inter alia*, who those other employees are or when they worked at the KMSF. Moreover, their allegations are plainly based on speculation and conjecture.

In short, because the factual allegations underlying relators' FCA claims fail to adequately state the "who, what, when, where, and how" of the alleged fraud, *Conteh*, 103 F. Supp. 3d at 64 (citation omitted), those claims should be dismissed.

B. Relators Have Failed to Plausibly State Any FCA Claims Under 12(b)(6)

Even if relators had provided sufficient detail to satisfy Rule 9(b), their allegations would still fail to state a claim under Rule 12(b)(6).

i. FCA Elements

Although relators purport to have claims pursuant to both 31 U.S.C. § 3729(a)(1)(A) and § 3729(a)(1)(B), their claims are essentially based on a "false certification" theory, which arises under § 3729(a)(1)(A). In any case, the "elements of a false statement claim [under 31 U.S.C. § 3729(a)(1)(B)] are nearly the same as those for a presentment claim [under 31 U.S.C. § 3729(a)(1)(A)], with the exception that a false statement claim requires evidence that the defendant made a false statement to the government, as opposed to the submission of a false claim for payment." *United States ex rel. Scollick v. Narula*, No. 14-CV-1339, 2017 WL 3268857, at *4 (D.D.C. July 31, 2017) (internal quotation marks and citation omitted); *see also Pencheng*, 71 F. Supp. 3d at 92 ("[A] cause of action can be stated under FCA section 3729(a)(1)(B) when, among

other things, a defendant has made a false statement that fraudulently induced payment or approval by the government."). There are three key components to such an FCA claim: (1) falsity; (2) materiality; and (3) scienter.

1. Falsity

First, a relator must plausibly plead that the defendant submitted a claim for payment that was "false." "A claim may be either factually or legally 'false.'" *United States ex rel. Barko v. Halliburton Co.*, 241 F. Supp. 3d 37, 49 (D.D.C. 2017), *aff'd*, 709 F. App'x 23 (D.C. Cir. 2017). A claim is "factually false" if it "is untrue on its face, for example if it include[s] 'an incorrect description of goods or services provided or a request for reimbursement for goods or services never provided.'" *Id.* at 49-50 (alteration in original) (internal quotation marks and citation omitted). A claim is "legally false" if payment was obtained by means of a "false certification." *Id.* at 50. A false certification, in turn, can be either "express" or "implied." *Id.* "An express false certification occurs when a claimant explicitly represents that he or she has complied with a contractual condition, but in fact has not complied." *Id.* (internal quotation marks and citation omitted). "An implied false certification occurs when the claimant makes no affirmative representation but fails to comply with a contractual or regulatory provision where certification was a prerequisite to the government action sought." *Id.* (internal quotation marks and citation omitted).

2. Materiality

A relator must also plausibly plead that an alleged misrepresentation or certification was "material" to the Government's decision to pay, *i.e.* that it had "a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property." *Id.* at 50 (quoting 31 U.S.C. § 3729(b)(4)). Materiality "look[s] to the effect on the likely or actual behavior of the recipient of the alleged misrepresentation." *Universal Health Servs., Inc. v. United States ex rel.*

Escobar, 136 S. Ct. 1989, 2002 (2016) ("*Escobar*") (citation omitted). Recognizing that the FCA "is not an all-purpose antifraud statute . . . or a vehicle for punishing garden-variety breaches of contract or regulatory violations[,]" the Supreme Court of the United States has described the materiality standard as "demanding." *Id.* at 2003 (internal quotation marks and citation omitted). In discussing this exacting standard, the Supreme Court stated that:

> A misrepresentation cannot be deemed material merely because the Government designates compliance with a particular statutory, regulatory, or contractual requirement as a condition of payment. Nor is it sufficient for a finding of materiality that the Government would have the option to decline to pay if it knew of the defendant's noncompliance. Materiality, in addition, cannot be found where noncompliance is minor or insubstantial.

Id. To the contrary, a misrepresentation is necessarily material if it "went to the very essence of the bargain." *Id.* at 2003 n.5 (citation omitted). For instance, a requirement that firearms purchased by the Government "must shoot" would be material, regardless of whether the Government expressly identified it as a condition of payment. *See id.* at 2001-02.

The Supreme Court also noted that the "rigorous" materiality standard is not "too fact intensive for courts to dismiss False Claims Act cases on a motion to dismiss[,]" and emphasized that "False Claims Act plaintiffs must . . . plead their claims with plausibility and particularity under Federal Rules of Civil Procedure 8 and 9(b) by, for instance, pleading facts to support allegations of materiality." *Id.* at 2004 n.6.

3. Scienter

Finally, to state an FCA claim, a relator must also plausibly allege that the defendant acted with the requisite scienter. *See* 31 U.S.C. § 3729(a)(1) (requiring that a defendant act "knowingly"); *id.* § 3729(b)(1)(A) ("knowing" and "knowingly" mean that a defendant "(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").

Establishing scienter requires showing that the defendant knew "(1) that it violated a contractual obligation, and (2) that its compliance with that obligation was material to the government's decision to pay." *United States v. Kellogg Brown & Root Servs., Inc.*, 800 F. Supp. 2d 143, 159 (D.D.C. 2011) (quoting *United States v. Sci. Applications Int'l Corp.*, 626 F.3d 1257, 1271 (D.C. Cir. 2010) ("*SAIC*")). Like materiality, the Supreme Court has emphasized that the standard for scienter is "rigorous." *Escobar*, 136 S. Ct. at 2002; *see also SAIC*, 626 F.3d at 1270 (emphasizing that courts should engage in "strict enforcement" of the scienter requirement).

Scienter cannot be established by relying on "collective knowledge" within a corporation. *See United States v. DynCorp Int'l, LLC,* 253 F. Supp. 3d 89, 103 (D.D.C. 2017) (noting that "collective knowledge" is "an inappropriate basis for proof of scienter . . . because it allows a plaintiff to prove scienter by piecing together scraps of innocent knowledge held by various corporate officials, even if those officials never had contact with each other or knew what others were doing in connection with a claim seeking government funds") (quoting *SAIC*, 626 F.3d at 1274-75) (internal quotation marks omitted). Although a relator "need not always allege the specific identity of the natural persons within the defendant corporation," he or she "must plead with particularity facts demonstrating 'how the company itself institutionalized and enforced its fraudulent scheme'" and "must provide details about specific actions taken by the defendant to facilitate and further the alleged fraudulent scheme." *United States ex rel. Folliard v. Comstor Corp.*, No. 11-CV-731, 2018 WL 1567620, at *21-22 & n.22 (D.D.C. Mar. 31, 2018), *reconsideration denied*, 2018 WL 5777085 (D.D.C. Nov. 2, 2018) (citation omitted).

ii. Relators Have Failed to Plead the Required Elements of An FCA Claim

The crux of relators' FCA claims appear to be based on a "false certification" theory, *i.e.*

that ManTech violated the FCA by either expressly or implicitly[9] falsely certifying compliance with various alleged statutory, regulatory, or contractual requirements.[10] *Barko*, 241 F. Supp. 3d at 50. As an initial matter, it bears noting that relators do not cite, let alone rely on, the six key "Contract Performance Metrics" that were set forth in the Government's Solicitation. *See supra* Section II. The Government specifically identified these requirements and noted that "[f]ailure to achieve these outcomes consistent with the [Performance Statement of Work] and Quality Assurance Surveillance Plan (QASP) may result in initiation of a Contract Discrepancy Report

[9] Whether the alleged false certifications were "express" or "implied" does not make a substantive difference here because, as discussed *infra*, relators have failed to plausibly plead key elements applicable to both theories of liability. *See United States ex rel. Groat v. Boston Heart Diagnostics Corp.*, 255 F. Supp. 3d 13, 23 (D.D.C. 2017), *amended on reconsideration in part on other grounds*, No. 15-CV-487, 2017 WL 6327540 (D.D.C. Dec. 11, 2017) (noting that "[u]nder either an express or implied false certification claim, the plaintiff must plead that the defendant knowingly violated a requirement that the defendant knows is material to the Government's payment decision") (citation and internal quotation marks omitted).

[10] Relators also appear to half-heartedly invoke a fraudulent inducement theory. *See, e.g.*, SAC ¶ 48 ("As detailed in paragraphs 122-146, in an effort to conceal the inefficiencies of an untrained workforce and to induce the U.S. to exercise the available Contract Options, notwithstanding ManTech's unqualified workforce, ManTech ordered its mechanics and technicians to falsify their direct labor hours to create the false impression of efficiency in performing direct labor mission-critical tasks."). Relators, however, have fallen well short of stating any such claims. "Fraudulent inducement exists where a contract was procured by fraud or when a party to a contract makes promises at the time of contracting that it intends to break." *United States ex rel. Barko v. Halliburton Co.*, 241 F. Supp. 3d 37, 61 (D.D.C.), *aff'd*, 709 F. App'x 23 (D.C. Cir. 2017). The SAC contains no allegations supporting a claim that ManTech fraudulently induced the Government to enter into the initial contract or that ManTech made any "promises at the time of contracting that it intend[ed] to break." *Id*. Rather, relators contend that ManTech fraudulently induced the Government to enter into various "contract options." *See, e.g.*, SAC ¶ 32 ("Based on ManTech's representations that it had been in full compliance with the Contract, the U.S. did, in fact, exercise contract options . . . ."). Any such claims, however, should be dismissed. Nowhere in the SAC do relators provide any detail whatsoever regarding the content of these "contract options," nor any other pertinent information such as when the options were allegedly entered into. The temporal aspect is crucial because any alleged false statements must have occurred prior to the entering of the contract options for there to be any possibility of a fraudulent inducement claim. *See Barko*, 241 F. Supp. 3d at 61 ("Fraudulent inducement exists where a contract was *procured* by fraud . . . .") (emphasis added). Thus, relators' allegations in this regard are plainly insufficient to satisfy both Rules 9(b) and 12(b)(6).

(CDR) and payment withhold as identified in the QASP." Solicitation at 3. Ignoring the actual core metrics of the contract, relators instead cherry pick a handful of the hundreds of obligations that ManTech was allegedly subject to. Relators' attempt to shoehorn these "garden-variety" and immaterial requirements into a basis for FCA liability should be rejected. *Escobar*, 136 S. Ct. at 2003.[11]

1. Mechanic and Technician Qualifications.

Relators assert that "the qualification of the mechanics working on [the MRAP] vehicles was material to the U.S. and the Contract" and that ManTech made "false claims for payment" because it "knowingly allow[ed] unqualified personnel to service the MRAPS." SAC ¶¶ 120, 142. According to the SAC, the alleged "cadre" of unidentified mechanics "lacked the requisite qualifications," which meant that ManTech "could not perform [the contract] with the requisite efficiency that was necessary and [an] essential predicate for award of successive Contract Options." SAC ¶¶ 138, 141. Although they do not explicitly make this allegation, relators suggest that ManTech falsely represented to the Government that such "unqualified" mechanics either attended MRAP-U, a Government-run training facility, or had previous experience with MRAP vehicles. *See* SAC ¶¶ 119, 121. Notwithstanding relators' oft-repeated allegation that there were "unqualified" mechanics, relators have failed to allege a violation of the FCA.

[11] Although relators' allegations are woefully insufficient to satisfy the heightened materiality pleading standard for other reasons, the fact that the Government has declined to intervene in this case ***three times*** further undercuts a finding of materiality. *See, e.g.*, *United States ex rel. Folliard v. Comstor Corp.*, No. 11-CV-731, 2018 WL 1567620, at *19 (D.D.C. Mar. 31, 2018), *reconsideration denied*, 2018 WL 5777085 (D.D.C. Nov. 2, 2018) ("[t]he requirement of demonstrating materiality" was "especially crucial" because "the government declined to intervene after almost five years of investigation, and has also declined to intervene in similar cases brought by this relator alleging similar fraudulent activity by other companies selling products under GSA contracts to the government").

Relators' failure to plead with sufficient particularity is especially egregious with respect to this allegation. Despite claiming that there was a "cadre" of unqualified mechanics, SAC ¶ 141, relators identify only one such alleged individual, Michael Green.[12] SAC ¶ 127. According to the SAC, Mr. Green "had no pertinent skills" because he "was previously a beautician." SAC ¶¶ 127-28. Beyond this, the SAC offers no details regarding, *inter alia*, when Mr. Green was purportedly hired, how long he supposedly worked at the KMSF, or why the fact that he may have "previously been a beautician" plausibly suggests that he did not have any relevant experience as a mechanic. Throughout the rest of the SAC, relators refer only generally to alleged "unqualified mechanics and technicians." *See, e.g.*, SAC ¶¶ 121, 123, 127. Relators provide no information about when "unqualified" mechanics were hired, how many such mechanics there were, or how long they worked in the KMSF. In addition to failing to identify the purportedly unqualified employees, relators do not even allege how ManTech "falsely certified" its mechanics' qualifications—did ManTech submit false training certifications from MRAP-U or did it submit fraudulent waivers? Instead, relators seem to suggest that individuals were "unqualified" based on their own subjective determination as to what made a person qualified. *See, e.g.*, SAC ¶ 128 ("ManTech seemed not to care that these men . . . had no pertinent skills."). This is insufficient. *See Conteh*, 103 F. Supp. 3d at 64. Similarly, as discussed above, relators' allegation that "[o]n information and belief, ManTech hired persons who had engaged third-parties to take and pass the mechanic competency test[,]" SAC ¶ 131, is woefully insufficient to satisfy Rule 9(b). *See Conteh*, 103 F. Supp. 3d at 66.

Additionally, relators fail to allege that the submission of an MRAP-U certification or waiver was an express condition of payment under the contract. And even if they did, that would

[12] It bears noting that ManTech has no record of a Michael Green ever being employed at the KMSF.

still not be sufficient. *See Escobar*, 136 S. Ct. at 2003. At most, relators have alleged that the MRAP-U provision detailed one obligation, of many, that ManTech agreed to undertake. *See* SAC ¶ 119. But, as the Supreme Court has instructed, there is a difference between a material requirement of a contract and a mere contractual obligation. *See Escobar*, 136 S. Ct. at 2003-04. Here, the alleged obligation identified by relators clearly falls into the latter category. The contract at issue was for the maintenance and repair of MRAP vehicles. *See* SAC ¶¶ 5, 23; *see also* Solicitation at 2. That was what the Government was focused upon and that was how ManTech's contract performance was measured. *See* Solicitation at 2-3. Despite relators' assertion that ManTech employed "a cadre of unqualified technicians and mechanics," SAC ¶ 141, ***there is not a single allegation in the SAC that any MRAP vehicles were improperly maintained or repaired.*** Thus, even according to the allegations of the SAC, the work that ManTech contracted to perform was not performed improperly. No matter how many times relators repeat the word "material," it is not plausible to view the alleged MRAP-U certification requirement as going "to the very essence of the bargain" under such circumstances. *Escobar*, 136 S. Ct. at 2003 n.5 (citation omitted).[13]

2. Reporting of Hours & Inputting of Data into SAMS-E.

Next, relators contend that "ManTech ordered its mechanics and technicians to falsify their direct labor hours" as part of an alleged scheme "to create the false impression of efficiency in performing direct labor mission-critical tasks." SAC ¶ 48; *see also* SAC ¶¶ 46-47. Relators allege that this was accomplished primarily by reporting false data in the "SAMS-E" system.[14] SAC ¶ 75.

[13] Relators' FCA claims based on the alleged use of unqualified mechanics are also foreclosed by the public disclosure bar, as discussed *infra* in Section IV.B.iv.

[14] As alleged in the SAC, SAMS-E is a "data management system" that "is designed for use by Army mechanics." SAC ¶¶ 6, 90. There are no allegations in the SAC connecting data reporting

Relators do not allege that ManTech provided inaccurate labor hours in connection with any invoice or bill that was submitted to the Government for payment. In fact, the SAC is devoid of any specific allegations describing the purported invoicing and payment process under the contract. Relators also do not allege that ManTech failed to meet a certain level of efficiency mandated under the contract or elsewhere. Instead, they proffer a convoluted theory that ManTech largely ***underreported*** hours to give the illusion of efficiency, which purportedly influenced the Government's decision to pay invoices and award option years under the CLSS contract.[15] As an initial matter, relators' claim is implausible because the ***underreporting*** of hours in the alleged manner, if anything, would likely have resulted in the Government ***reducing*** the scope of the contract and thus ***reducing*** the amount of money paid to ManTech because the Government, of course, would have ordered fewer hours going forward if the necessary work was being accomplished with fewer labor hours. Moreover, relators fail to even connect SAMS-E reporting to any Government payment decisions under the contract.[16] Accordingly, relators fail to plausibly plead that the purported underreporting of hours in SAMS-E is "material" under *Escobar* and they therefore have failed to state a claim.

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to any payments under the CLSS contract, nor is there any basis or allegation that SAMS-E has anything to do with invoices under the contract.

[15] Relators also allege without additional explanation that the underreporting of hours "pollutes readiness calculations, reliability assessments, and procurement decisions, and does further damage to the U.S. military." SAC ¶ 109. However, this bare assertion of such amorphous harm is insufficient under Rule 9(b). It is also far removed from any actual obligation under the CLSS contract.

[16] Although relators' allegations are based primarily on the implausible theory that ManTech underreported hours in order to create a false picture of efficiency, they also include vague allegations that ManTech overreported hours. *See* SAC ¶ 47 ("Depending on ManTech's needs, ManTech either overreported direct labor hours or underreported direct labor hours by encouraging its employees to mischaracterize direct labor hours as indirect labor hours (and vice versa)."). Aside from being plainly insufficient under Rule 9(b), these allegations likewise fail to state an FCA claim because relators have failed to include any factual allegations connecting the alleged overreporting of hours to any payment decisions under the contract.

Relators' half-hearted attempt to allege otherwise fails. According to relators, the reporting of hours was "material" to the Government because the term "'[l]abor hour' is referenced 174 times in the Contract" and "ManTech had an affirmative duty to accurately report its labor hours." SAC ¶¶ 41-42. But *Escobar* instructs that "it [is not] sufficient for a finding of materiality that the Government would have the option to decline to pay if it knew of the defendant's noncompliance." *Escobar*, 136 S. Ct. at 2003. At most, relators have alleged that ManTech did not fully comply with a contractual requirement regarding the reporting of hours, but that is not sufficient to state a claim under the FCA. *See id.* (the FCA "is not an all-purpose antifraud statute or a vehicle for punishing garden-variety breaches of contract or regulatory violations") (internal quotation marks and citation omitted). Moreover, although the SAC contains a handful of allegations regarding the SAMS-E system being "material" to the U.S. Army from an operational standpoint, *see, e.g.*, SAC ¶¶ 91-98 (alleging, *inter alia*, that "[m]aintaining accurate SAMS-E reporting is mission-critical for U.S. military forces engaged in combat"), relators overlook the fact that the alleged violation at issue must be material ***to the Government's decision to pay***, not just "material" in some general sense. *See, e.g.*, *Escobar*, 136 S. Ct. at 2002 ("[A] misrepresentation about compliance with a statutory, regulatory, or contractual requirement must be material to the Government's payment decision . . . ."). The SAC is also devoid of any factual allegations providing a concrete link between the SAMS-E system and any payments under the CLSS contract.[17]

[17] In addition to failing to connect SAMS-E reporting to any payments under the contract, it bears noting that relators previously alleged that a different subcontractor, SAIC, was responsible for entering data into the SAMS-E system. *See* First Am. Compl. (ECF No. 26) ¶ 35 ("Although the mechanics and technicians did not enter this data directly; they recorded their time on timesheets that were collected by ManTech managers and provided to employees of Science Applications International Corporation ('SAIC') who, upon information and belief, accurately entered such time into the SAMS-E database."). Relators have since deleted that allegation and have artfully pled

No matter how many times relators repeat the word "material" in the SAC, they have failed to plausibly allege that the reporting of labor hours or the reporting of hours in the SAMS-E system was material to the Government's decision to make any payments under the CLSS contract or to award option years to ManTech. *See id.* at 2004 (rejecting the notion "that any statutory, regulatory, or contractual violation is material so long as the defendant knows that the Government would be entitled to refuse payment were it aware of the violation").

3. Compliance with the TVPRA.

Relators also point to various prohibitions against human trafficking set forth in the TVPRA and other related regulatory provisions incorporated by reference in the Solicitation.[18] *See* SAC ¶¶ 265-78. Aside from conclusory allegations that these obligations were "material" and that ManTech "falsely implied certification of compliance with the TVPRA requirements," *see, e.g.*, SAC ¶¶ 277, 281-82, 284, relators have offered no factual basis whatsoever from which to plausibly conclude that these obligations were material under *Escobar*. *See Escobar*, 136 S. Ct. at 2003 n.5 (only those obligations that go "to the very essence of the bargain" between the Government and the contractor are material under the FCA); *Folliard*, 2018 WL 1567620, at *20 (relator must do more than simply provide "citations to the regulatory framework" to satisfy

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the SAC to avoid directly discussing who inputted data into SAMS-E. *See, e.g.*, SAC ¶ 56 ("ManTech managers would either reclassify indirect labor hours as direct labor hours or increase the hours recorded on the timesheet, ***that were later entered into SAMS-E***.") (emphasis added). Thus, putting aside that the Government would likely have been aware of obvious mistakes like more than 24 hours being entered in the SAMS-E system for a single day, *see, e.g.*, SAC ¶¶ 79-80, relators have not provided any factual allegations to support its suggestion that ManTech entered false data into the SAMS-E system.

[18] Although relators have since deleted their outlandish allegations of "slavery"—*see, e.g.*, First Am. Compl. (ECF No. 26) ¶¶ 5, 155, 180, 205—they continue to assert "forced labor" claims against ManTech under the TVPRA. As discussed *infra* in Section V, relators' "forced labor" claims are implausible on their face and fail on many levels.

heightened materiality pleading standard). To the contrary, the only plausible conclusion to draw is that these obligations were not material.

As reflected by the six key contract performance metrics referenced above, the contract was primarily concerned with the proper repair and maintenance of MRAP vehicles. *See* SAC ¶¶ 5, 23; *see also* Solicitation at 2-4. Thus, although a prohibition on using forced labor is no doubt an important obligation (and one that ManTech abided by, *see infra* Section V), it does not plausibly go to the "very essence of the bargain" between the Government and ManTech. *Escobar*, 136 S. Ct. at 2003 n.5. Had the Government discovered noncompliance with the TVPRA or related regulations, it surely may "have [had] the option to decline to pay," but that, standing alone, is not sufficient to demonstrate materiality. *Id.* at 2003. Relators have offered no factual basis for concluding otherwise.

Additionally, relators have failed to plead that any purported certification based on compliance with the TVPRA was false as they have not adequately stated an underlying TVPRA violation. *See infra* Section V. As such, any FCA claim based on the alleged TVPRA claim must be dismissed.

iii. Relators Have Also Failed to Plausibly Plead Scienter

Relators have also failed to plausibly plead scienter with respect to the aforementioned alleged statutory, regulatory, or contractual violations. The SAC is devoid of particularized allegations plausibly "demonstrating how the company itself institutionalized and enforced its fraudulent scheme." *Folliard*, 2018 WL 1567620, at *21 (internal quotation marks and citation omitted). Rather, throughout the SAC relators refer to "ManTech" in general and in conclusory fashion and do not identify any ManTech executives or employees who allegedly knew that any material contractual, statutory, or regulatory requirements were being violated. *See, e.g.*, SAC ¶ 82 (alleging that "ManTech" falsely certified compliance and that "ManTech" "knew it was not in

compliance with material and legal requirements of the Contract").[19] Aside from pleading deficiencies from a Rule 9(b) and Rule 12(b)(6) standpoint, relators' allegations fail to clear the well-established "collective knowledge" hurdle. *See DynCorp Int'l, LLC*, 253 F. Supp. 3d at 103. Here, unlike in *DynCorp*, relators have offered no factual basis for plausibly concluding that any one executive or employee at ManTech who was involved in the process of submitting claims knew that the contractual, statutory, and regulatory provisions at issue were being violated, *contra id.* (scienter adequately pled where government alleged, *inter alia*, that "high-level DynCorp employees made statements about the rates [it charged the government] being significantly higher than reasonable"), nor have they provided sufficient factual allegations from which to plausibly conclude that "the company itself institutionalized and enforced its fraudulent scheme," *Folliard*, 2018 WL 1567620, at *21 (citation omitted). The conclusory and unspecific allegations in the SAC are therefore insufficient to satisfy the "rigorous" pleading standard for scienter. *See id.* (quoting *Escobar*, 136 S. Ct. at 2002).

Furthermore, as discussed above, none of the alleged statutory, regulatory, or contractual requirements that ManTech supposedly violated was plausibly material to payment under the CLSS contract. Thus, even if relators had adequately pled that ManTech was aware of the alleged statutory, regulatory, or contractual violations, relators have not plausibly pled that ManTech knew

[19] Although relators refer to ManTech generally throughout the SAC—*see, e.g.*, SAC ¶ 48 ("***ManTech*** ordered its mechanics and technicians to falsify their direct labor hours to create the false impression of efficiency in performing direct labor mission-critical tasks.") (emphasis added)—in a handful of paragraphs, relators refer specifically to a ManTech "supervisor" and "manager" who allegedly directed employees to "falsify the SAMS-E reporting by under-reporting the hours the mechanics were working." *See, e.g.* SAC ¶¶ 60, 72. These allegations, however, are not sufficient to satisfy the rigorous scienter pleading standard. Relators do not include any further allegations involving those individuals or their role in purportedly knowingly submitting false claims to the Government. Moreover, as noted above, the SAC is devoid of any allegation tying SAMS-E to invoicing to the Government, because there were no such connections.

that these violations were ***material*** to the Government's payment decision. *See DynCorp, Int'l, LLC*, 253 F. Supp. 3d at 102-03 ("Establishing knowledge . . . on the basis of implied certification requires the plaintiff to prove that the defendant knows (1) that it violated a contractual obligation, and (2) that its compliance with that obligation was material to the government's decision to pay.") (alteration in original) (citation omitted).

iv. Relators' Claims Regarding Employee Qualifications Are Foreclosed by the FCA's Public Disclosure Bar

In addition to the aforementioned deficiencies, insofar as relators' FCA claims are based on ManTech's alleged noncompliance with purported qualification requirements under the CLSS contract, *see supra* Section IV.B.ii.1, those claims also fail for another reason: they are foreclosed by the FCA's public disclosure bar. The public disclosure bar provides that:

> The court shall dismiss an action or claim under [the FCA], 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.

31 U.S.C. § 3730(e)(4)(A). Recognizing that "the bounty available to *qui tam* relators created the danger of parasitic exploitation of the public coffers," Congress established the public disclosure bar as one "restriction[]" intended to "curtail abusive suits." *United States ex rel. Shea v. Cellco P'ship*, 863 F.3d 923, 926 (D.C. Cir. 2017) (citation omitted). The central goal of the public disclosure bar is to prevent suits in which "the government already has enough information to investigate the case and to make a decision whether to prosecute or where the information could at least have alerted law-enforcement authorities to the likelihood of wrongdoing." *United States ex rel. Oliver v. Philip Morris USA Inc.*, 826 F.3d 466, 472 (D.C. Cir. 2016) (internal quotation marks and citation omitted); *see also Folliard*, 2018 WL 1567620, at *11.

Relators' qualification claims fail because: (i) they are based upon allegations or transactions that were publicly disclosed through a previous *qui tam* action, and (ii) relators have failed to adequately plead that they are original sources under the FCA.

1. Relators' Allegations Were Previously Disclosed Through an Enumerated Source

More than two years prior to the filing of the instant action, a former technician who was employed by ManTech to repair MRAP vehicles filed a *qui tam* lawsuit alleging, *inter alia*, that ManTech violated the FCA by "using personnel who lacked the contractually-required training and qualifications" to perform such services. Ex. B ¶ 2 (hereinafter "*Morgan*").[20] Relators' allegations regarding unqualified mechanics are substantially similar to the publicly disclosed allegations in the *Morgan* case.

First, the *Morgan* case clearly constituted a "public disclosure" as defined by the FCA. It is well established that "a civil complaint can plainly constitute a public disclosure in a civil hearing under the False Claims Act." *United States ex rel. Foust v. Grp. Hospitalization & Med. Servs.*, 26 F. Supp. 2d 60, 67 (D.D.C. 1998); *see also United States ex rel. Springfield Terminal Ry. Co. v. Quinn*, 14 F.3d 645, 652 (D.C. Cir. 1994) ("It is clear from statutory context that the term 'hearing' was intended to apply in a broad context of legal proceedings under § 3730(e)(4)(A)."). Thus, there is no question that the publicly-filed complaint in the *Morgan qui tam* action qualifies as a disclosure through an enumerated source. *See Folliard*, 2018 WL 1567620, at *12 n.13 (rejecting argument that the Government is not a "party" in a non-intervened

[20] As noted above, the Court may take judicial notice of public court filings without converting the present Motion to a motion for summary judgment. *See, e.g.*, *CVS Pharmacy*, 2018 WL 654289, at *3 (taking judicial notice of public court filings for purposes of assessing public disclosure bar under Rule 12(b)(6)). A copy of the complaint in *United States ex rel. Morgan v. ManTech Int'l Corp. et al.*, No. 13-CV-1289 (D.D.C. filed Aug. 26, 2013), is attached hereto as Exhibit B.

FCA case for purposes of the amended public disclosure bar because such an "argument loses sight of the fact that in every *qui tam* action, the government is the 'real party in interest'") (citation omitted); *accord United States ex rel. Bogina v. Medline Indus., Inc.*, No. 11-CV-5373, 2015 WL 1396190, at *10 n.9 (N.D. Ill. Mar. 24, 2015), *aff'd sub nom.*, 809 F.3d 365 (7th Cir. 2016) (disclosures in a prior non-intervened *qui tam* action qualify as disclosures through "a Federal . . . civil . . . hearing in which the Government or its agent is a party" under § 3730(e)(4)(A)); *United States ex rel. Booker v. Pfizer, Inc.*, 9 F. Supp. 3d 34, 44 (D. Mass. 2014) (same).

Second, the allegations in relators' complaint regarding qualifications are substantially similar to the allegations in the *Morgan* case.[21] The public disclosure bar is triggered when a claim is based on assertions that are "substantially similar" to "allegations or transactions" that were publicly disclosed through an enumerated source. *Springfield Terminal*, 14 F.3d at 651; *see also Oliver*, 826 F.3d at 472 ("We have explained that a suit is 'based upon' publicly disclosed 'allegations or transactions' when the allegations in the complaint are 'substantially similar' to those in the public domain.") (citation omitted). In its seminal decision on the public disclosure bar, the D.C. Circuit explained that the bar is triggered when either (i) the "allegation" of fraud ("Z") was publicly disclosed, or (ii) the critical elements of a fraudulent "transaction," *i.e.* a misrepresented state of facts ("X") plus a true state of facts ("Y"), were publicly disclosed. *Springfield Terminal*, 14 F.3d at 654; *see also Oliver*, 826 F.3d at 471. In both situations, "there

[21] Relators' allegations based on hour reporting also appear derivative of allegations raised in the *Morgan* case. *Compare* SAC ¶¶ 105, 109 ("By polluting SAMS-E with corrupted data, ManTech denied the government all of the benefits that the government sought from ManTech . . . . False data in this data-driven system pollutes readiness calculations, reliability assessments, and procurement decisions, and does further damage to the U.S. military."), *with* Ex. B ¶ 80 (alleging that because of "errant and incorrect data…the U.S. Military received defective and flawed information on MRAP repair times, costs, and parts, and U.S. Government databases that have incorporated these false records have been severely compromised.").

is little need for *qui tam* actions, [because they] would tend to be suits that the government presumably has chosen not to pursue or which might decrease the government's recovery in suits it has chosen to pursue." *Springfield Terminal*, 14 F.3d at 654. This is precisely the kind of case where "there is little need" for a *qui tam* action. *Id.*

Just like the relators here, *see, e.g.*, SAC ¶ 116, the relator in *Morgan* alleged that ManTech falsely "certified that all of its mechanical and electronic technicians . . . had successfully completed MRAP University, a qualification that authorized those technicians to be exposed to and properly repair the classified technologies embodied in the MRAPs." Ex. B ¶ 39. The similarities between the SAC and the earlier-filed *Morgan qui tam* action do not stop there. *Compare,* SAC ¶ 117 ("The MRAPs were a top priority for the Department of Defense and the Army as this high-cost vehicle had the design and construction necessary to withstand IED blasts and, thus, save the lives of thousands of U.S. service men and women."), *with* Ex. B ¶ 22 ("Deploying MRAP vehicles to Afghanistan and Iraq became a top priority of the U.S. Military beginning around 2006 and 2007, as these vehicles better protected troops against improvised explosive device ("IED") attacks and roadside bombs"); *compare* SAC ¶ 118 ("The Contract required ManTech to staff the KMSF with mechanics and technicians who were adequately trained to efficiently and effectively provide MRAP repair and maintenance services."), *with* Ex. B ¶ 38 ("The purpose of MRAP University was to ensure that all mechanical and electronic technicians were trained to skillfully, competently, and efficiently analyze damage to and provide repair and maintenance services needed on MRAPs manufactured by multiple manufacturers.").

Although the *Morgan* relator was employed in a different country, Afghanistan, the prior *qui tam* action clearly related to the same contract at issue in this litigation. *See* Ex. B ¶ 33 ("In or around June 2012, the U.S. Army TACOM Contracting Center awarded ManTech the MRAP

Contractor Logistics Sustainment and Support Services contract for $2.85 billion . . . ."). The *Morgan* action was unsealed in June 2014, and voluntarily dismissed by the *Morgan* relator in September 2014—more than one year before relators filed the instant action. *See* Order of Voluntary Dismissal (ECF No. 10), *Morgan v. ManTech Int'l Corp. et al.*, No. 13-CV-1289 (D.D.C. filed Sept. 4, 2014).

Because the *Morgan qui tam* action disclosed the same allegation of fraud at issue in this case—*i.e.* that ManTech purportedly violated the FCA by falsely certifying compliance with contractual requirements relating to mechanic qualifications—the public disclosure bar has been triggered. *See Springfield Terminal*, 14 F.3d at 654; *see also Oliver*, 826 F.3d at 471. Even if that were not the case, the bar would still be triggered because the *Morgan* action clearly disclosed the critical elements of the allegedly fraudulent transaction, *i.e.* the "misrepresented state of facts" (that ManTech had complied with the contract's qualification requirements) plus the "true state of facts" (that ManTech had, in fact, not complied with such requirements). *See, e.g.*, *Oliver*, 826 F.3d at 473-74 (public disclosure bar applies where "a hypothetical government investigator . . . would be 'alerted ... to the likelihood' that the [defendant] was falsely certifying compliance with the relevant provisions" of a government contract) (citation omitted). This is an even stronger case than *Oliver* because not only *could* the Government have investigated the alleged fraud, it indisputably had the obligation to do so. *See* 31 U.S.C. § 3730(b) (discussing Government's obligation to investigate *qui tam* actions); Notice Regarding Relators' Proposed Am. Compl. (ECF No. 25) (filed Feb. 2, 2018) (quoting statute regarding obligation to "investigate a violation" of the FCA). The Government was required to investigate the qualification allegations while the *Morgan*

action was under seal, and, after doing so, the Government ultimately declined to intervene—just as it has done ***three times*** in this case.[22]

Thus, the public disclosure bar has indisputably been triggered as it relates to any FCA claims based on ManTech's alleged noncompliance with employee qualification requirements.

2. Relators Are Not Original Sources

A relator may still avoid the public disclosure bar if he qualifies as an "original source" under the FCA. An "original source" is defined as "an individual who either (i) prior to a public disclosure . . . , has voluntarily disclosed to the Government the information on which allegations or transactions in a claim are based, or (2) who has 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." 31 U.S.C. § 3730(e)(4)(B). Relators have not plausibly pled that they are "original sources" as defined by the FCA.

Relators plainly cannot demonstrate that they voluntarily disclosed their allegations of fraud to the Government prior to a public disclosure. As discussed above, the same allegations were publicly disclosed when the *Morgan qui tam* action was unsealed more than one year prior to the filing of the instant action.

Nor can relators plausibly plead that their knowledge is "independent of and materially adds" to the public disclosure of alleged fraud in the *Morgan* action. Relators' allegations in this

[22] The Government's non-intervention decision in the *Morgan* case further underscores relators' inability to plausibly plead that ManTech's alleged noncompliance with mechanic qualifications was material to any Government payment decisions under the CLSS contract. *See, e.g.*, *Folliard*, 2018 WL 1567620, at *19. The *Morgan* relator apparently recognized this because, following the Government's decision not to intervene, he eventually moved to voluntarily dismiss the case without ever having served the complaint on ManTech.

regard are conclusory and thus not entitled to the assumption of truth. *See, e.g.*, SAC ¶ 121 ("Relators Hawkins, Hayes, Sawyer, and Locklear have original-source knowledge that ManTech made false claims to the U.S. about the qualifications of its mechanics . . . ."). Moreover, relators do not even allege that their knowledge "materially adds" to the prior public disclosures. *See id.* ¶ 21 ("Relators have direct, independent, knowledge of the information on which the allegations herein are based. . . ."). Nor can they.

As the First Circuit has noted, "[a]s the level of detail in public disclosures increases, the universe of potentially material additions shrinks." *United States ex rel. Winkelman v. CVS Caremark Corp.*, 827 F.3d 201, 211 (1st Cir. 2016). This is such a case. As discussed above, it is apparent that relators are raising *the same* allegations that were raised in the *Morgan* action. In the present complaint, relators largely repeat the allegation that ManTech "regularly recruited and employed unqualified personnel" without providing any concrete details. *See, e.g.*, SAC ¶ 49. At most, relators include allegations regarding the work history of one purported ManTech employee named Michael Green, *see* SAC ¶ 127, which is simply another way of alleging that ManTech employees were unqualified. Relators do not allege who at ManTech orchestrated this purported fraud, how many employees were implicated, or any other critical facts regarding this claim. Relators' alleged knowledge therefore does not "materially add" to the public disclosures. *See, e.g.*, *United States ex rel. Paulos v. Stryker Corp.*, 762 F.3d 688, 694 (8th Cir. 2014) (where the "key facts" to an FCA claim have already been "thoroughly revealed," the relator's knowledge, "even if gained early and independently," does not "materially contribute[] anything of import to the public knowledge about the alleged fraud"); *United States ex rel. Moore & Co., P.A. v. Majestic Blue Fisheries, LLC*, 812 F.3d 294, 307 (3d Cir. 2016) ("[A] relator materially adds to the publicly disclosed allegation or transaction of fraud when it contributes information—distinct from what

was publicly disclosed—that adds in a significant way to the essential factual background: 'the who, what, when, where and how of the events at issue.'") (citation omitted); *contra United States ex rel. Beauchamp v. Academi Training Ctr.*, 816 F.3d 37, 47 (4th Cir. 2016) (relator's allegations materially added to prior public disclosures because they concerned a "distinct and unrelated" allegation of fraud). Accordingly, because relators do not qualify as original sources, their FCA claims based on ManTech's alleged violation of contractual qualification requirements are foreclosed by the public disclosure bar.

For all the foregoing reasons, relators' FCA claims should be dismissed in their entirety.

V. RELATORS HAVE FAILED TO STATE TVPRA CLAIMS

In Count IV of the SAC, relators assert individual claims[23] against ManTech under the Trafficking Victims Protection Reauthorization Act—a criminal statute passed "to combat trafficking in persons," which Congress described as "a contemporary manifestation of slavery whose victims are predominately women and children[.]"[24] *Lagayan v. Odeh*, 199 F. Supp. 3d 21, 26-27 (D.D.C. 2016). Despite having voluntarily signed their employment offers with ManTech in which they earned generous hourly wages for a 70-72 hour work week, not including additional pay for hardship and per diem pursuant to the Joint Travel Regulation—*see* Decl. of Flora Lewis ("Lewis Decl."), Ex. 1 at 4; Ex. 7 at 2; Ex. 11 at 2; Ex. 16 at 2; Ex. 21 at 2[25]—and despite having

[23] It is well established that a relator does not have standing to pursue non-FCA claims on behalf of the Government. *See, e.g.*, *United States ex rel. Bender v. N. Am. Telecomm., Inc.*, 750 F. Supp. 2d 1, 10 (D.D.C. 2010), *aff'd*, 499 F. App'x 44 (D.C. Cir. 2013). Thus, to the extent that Count IV of the SAC seeks any relief on behalf of the Government, it should be dismissed.

[24] Relators appear to be bringing suit pursuant to 18 U.S.C. § 1595, which provides a private right of action to individuals who are alleged to be victims of a violation of the TVPRA.

[25] The Declaration of Flora Lewis is attached hereto as Exhibit A. The Declaration's accompanying exhibits are attached hereto as Exhibits 1-22. As relators' employment offer letters are "referred to in the complaint and integral to [relators'] claim," *see, e.g.*, SAC ¶¶ 154, 158, 160, they are properly considered on a motion to dismiss. *Econ. Research Servs.*, 208 F. Supp. 3d at 227 (citation omitted).

advance knowledge of the rigors of the job—*see, e.g.*, SAC ¶¶ 178, 181 ("Prior to working for ManTech, Hawkins worked for VSE Corporation . . . and Ranger Land Systems at the KMSF. . . . At ManTech's instruction, Hawkins left Kuwait to participate in ManTech's new employee training in the U.S."); *id.* ¶¶ 196, 199 ("Prior to working for ManTech, Hayes worked for subcontractors VSE and Ranger when SAIC was the prime contractor on MRAP maintenance and repair. . . . At ManTech's instruction, Hayes returned to the United States for training."); *id.* ¶ 205 ("Prior to working for ManTech, Sawyer was employed by VSE which was a subcontractor to ManTech's predecessor SAIC on the MRAP contract.")—relators claim that they were subjected to forced labor. Relators' TVPRA claims are deficiently pled and implausible on their face. Count IV should therefore be dismissed.

Relators' TVPRA claims are centered around the allegation that ManTech subjected them to "forced labor" in violation of 18 U.S.C. § 1589(a).[26] To plead a forced labor claim under Section 1589, a plaintiff must plausibly allege that the defendant "knowingly provide[d] or obtain[ed] the labor or services of a person" by:

> (1) means of force, threats of force, physical restraint, or threats of physical restraint to that person or another person; (2) by means of serious harm or threats of serious harm to that person or another person; (3) by means of the abuse or threatened abuse of law or legal process; or (4) by means of any scheme, plan, or pattern intended to cause the person to believe that, if that person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint.

18 U.S.C. § 1589(a). Relators have failed to plausibly plead any TVPRA claims.

[26] Relators also cite to 18 U.S.C. § 1592, which prohibits certain conduct with respect to passports and immigration documents taken in furtherance of forced labor. Claims under this section require the establishment of a predicate violation of the TVPRA. *See Lagayan v. Odeh*, 199 F. Supp. 3d 21, 29 (D.D.C. 2016) ("[A] violation of 18 U.S.C. § 1592 for knowing removal, confiscation, concealment, and possession of [an employee's] passport . . . depend[s] on [the] [p]laintiff sufficiently alleging predicate offenses under the TVP[R]A."). As relators have failed to state any "forced labor" or other predicate TVPRA claim, this claim also fails.

A. Relators Have Failed to Adequately Plead "Forced Labor" By Means of the "Abuse of Law or Legal Process"

Relators allege: (i) an "abuse or threatened abuse of law or legal process" because of ManTech's alleged "confiscation of their passports . . . [and] refusal to obtain legal authorization" for them to work in Kuwait, SAC ¶ 249; (ii) an "abuse or threatened abuse of law or legal process" because of the alleged "power" ManTech had to report them as having "absconded" under Kuwaiti law, SAC ¶ 225. These claims fail.

Under the TVPRA, the term "abuse or threatened abuse of law or legal process" is defined as "the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, *in order to exert pressure on another person to cause that person to take some action or refrain from taking some action*." 18 U.S.C. § 1589(c)(1) (emphasis added); *see also Muchira*, 850 F.3d at 622-23 (demonstrating "abuse" of law or legal process "requires proof that the defendant 'knowingly' abused the law or legal process as a means to *coerce* the victim to provide labor or services against her will.") (emphasis in original). The classic case is where an employer threatens an employee with deportation in order to induce that employee to keep working. *See, e.g.*, *Kiwanuka v. Bakilana*, 844 F. Supp. 2d 107, 115 (D.D.C. 2012) ("[M]any courts have determined that threats of deportation constitute a condition of servitude induced through abuse of the legal process."). In such a case, the TVPRA is triggered because there is an allegation that an employee has been threatened with a wrongful use of the legal system with the intent to coerce the employee into taking some action.

Here, however, relators do not allege that they were personally threatened with deportation or any other adverse legal consequence by ManTech ***in order to induce them to take, or refrain from taking, some action***. Rather, they primarily allege that ManTech directed them to violate

Kuwaiti immigration law and failed to obtain work visas on their behalf. *See, e.g.*, SAC ¶ 155 (alleging that ManTech ordered relators to conduct "visa runs" in order to circumvent unidentified "Kuwaiti immigration and labor laws"); *id.* ¶ 171 ("At no time during the relevant period of this complaint did ManTech obtain Visa 18s or work authorizations in Plaintiffs' names.").[27] As pled, there is simply no connection between ManTech's alleged abuse of law or legal process and an intent to coerce relators to remain in ManTech's employ, as would be required to state a forced labor claim under the TVPRA. *See Muchira*, 850 F.3d at 622 (establishing "abuse or threatened abuse of law or legal process . . . requires more than evidence that a defendant violated other laws of this country or encouraged others to do the same").[28] In the absence of any allegations of threats by ManTech, relators have simply alleged that they feared that an independent, sovereign third party—the Kuwait Government—might take action against them. This is insufficient to state a TVPRA claim against ManTech.

Further, relators have failed to adequately plead that the conduct they were allegedly directed to engage in constituted a violation of Kuwaiti law. For instance, although relators baldly

[27] Although relators allege in the SAC that ManTech did not obtain a Visa 18 for any of the relators, in the First Amended Complaint, relators alleged that ManTech ***did*** obtain a Visa 18 for one of the relators, Clinton Sawyer. *See* ECF No. 26 ¶¶ 123-24.

[28] Relators also allege that ManTech "confiscat[ed] . . . their passports." SAC ¶ 173. Relators appear to make such allegations in support of their Section 1592 claim, which prohibits certain actions involving passports or other immigration documents. *See supra* n.26. However, these allegations do not support any predicate "forced labor" claim, which is required to make a Section 1592 claim. Relators ignore explicit language in the Solicitation permitting an employer to take possession of an employee's passport. *See* Solicitation at 36 ("Contractors shall only hold employee passports and other identification documents discussed above for the shortest period of time reasonable for administrative processing purposes."). As relators understood that ManTech "would be responsible, as their employer, for obtaining all of the immigration approvals and work permits needed for them to work in Kuwait," SAC ¶ 169, it is clear that collecting passports in such circumstances is not an "abuse of legal process" or otherwise indicative of "forced labor." Moreover, relators never allege that they even asked ManTech for their passports to be returned, let alone that ManTech refused to return them.

assert that "ManTech . . . forc[ed] workers to go on 'visa runs'—thus encouraging and requiring workers to violate immigration and other laws[,]" SAC ¶ 10, they fail to cite any provision of Kuwaiti law in support of that contention.[29] Likewise, although relators refer to the existence of a 72-hour waiting period prior to being able to legally re-enter Kuwait, *see id.* ¶ 214, they cite no provision of Kuwaiti law in support of that assertion anywhere in the SAC. Allegations such as these epitomize the kind of conclusory allegations and bare legal conclusions that the Supreme Court has instructed courts to disregard. *See Iqbal*, 556 U.S. at 678; *Kowal*, 16 F.3d at 1276; *see also SEC v. Jackson*, 908 F. Supp. 2d 834, 859 (S.D. Tex. 2012) (dismissing Foreign Corrupt Practices Act claim where SEC alleged, in conclusory fashion, that the granting of permit extensions by the Nigerian government qualified as a "discretionary act" under Nigerian law because, *inter alia*, the SEC failed "to plead the Nigerian law or policy that so provides").

Putting relators' conclusory and legal allegations aside, it is apparent that their factual allegations do not plausibly add up to an "abuse," much less a violation, of Kuwaiti immigration law. For example, relators assert that they were directed to "[leave] Kuwait, fl[y] to and enter[] Bahrain, and then immediately turn[] around and fl[y] back to and enter[] Kuwait in order to be issued renewed tourist visas." SAC ¶ 155. It stretches the bounds of credulity, however, to believe that an immigration official who just discovered an alleged violation of Kuwaiti law (i.e. re-entering Kuwait within 72 hours) would simply stamp the offender's passport and allow him to enter the country illegally. *Id.* ¶ 98. Moreover, while relator Larry Hawkins attempts to assign blame to ManTech for his alleged detention in Bahrain on suspicion of an immigration violation—*see id.* ¶¶ 187, 190 (alleging that he was "[a]bandoned by ManTech in Bahrain" where he was

[29] The lack of citation is telling considering relators' citation to specific provisions of Kuwaiti law elsewhere in the SAC. *See* SAC ¶¶ 250-52 (citing provisions of the Kuwait Private Sector Labor Law that purportedly support their TVPRA claims).

"trapped . . . for three weeks")—he admits that the reason why he was detained ***had nothing to do with ManTech***. *See id.* ¶ 187 (explaining that a "hold" had been placed on his passport because authorities had reason to believe that he had brought his child with him to Kuwait). ManTech's alleged refusal to step in and help resolve an employee's personal issues can hardly be the type of conduct covered by the TVPRA. Put simply, relators' allegations are not only procedurally deficient, they are implausible. *See Jackson*, 908 F. Supp. 2d at 858-59 (SEC failed to plausibly allege violation of Foreign Corrupt Practices Act where their allegations were "equally consistent" with a conclusion that payments to government officials qualified as legal "facilitating payments" under the FCPA). Because relators have failed to plausibly allege any violation of Kuwaiti immigration law, it follows that their forced labor claim must fail as there is no alleged "abuse" of law to support a TVPRA claim.[30]

Relators' allegation that ManTech subjected them to forced labor because it had the "power . . . [to] report to the Kuwaiti authorities that [an] employee had 'absconded' from the workplace," fares no better. SAC ¶ 225. Nowhere in the SAC do relators allege that ManTech ever wrongfully threatened to file an "absconding" charge against them, nor that ManTech did so ***in order to coerce them to remain employed at the KMSF***. This pleading deficiency is fatal to relators' TVPRA claims. *See Muchira*, 850 F.3d at 622.

[30] Relators' claims of "forced labor" are also belied by their own allegations. Taking their allegations as true for purposes of this Motion only, the SAC establishes that relators were given back their passports and did have the ability to escape from the so-called "horrific" work environment at the KMSF if they so chose. *See, e.g.*, SAC ¶ 176 ("The Millbrook employees would give each of the men their passports and provide plane tickets to Bahrain."). Of course, relators did not choose to leave their employment with ManTech and were apparently upset with ManTech when they were terminated, as evidenced by their previously-pled breach of contract claims. *See* First Am. Compl. (ECF No. 26) ¶¶ 227-37 (asserting a breach of contract claim against ManTech for terminating relators without "reasonable notice" despite their alleged "exemplary job performance").

B. Relators Have Failed to Adequately Plead "Forced Labor" by Means of "Serious Harm"

Relators also appear to allege TVPRA claims based on "serious harm or threats of serious harm" due to: (i) the reimbursement provisions in their employment offer letters, *see* SAC ¶¶ 158-62; and (ii) the "horrific" work conditions they allegedly endured at the KMSF, *see* SAC ¶¶ 226-260. These allegations likewise fail to state a TVPRA claim.

Under the TVPRA, "serious harm" is defined as "any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor or services in order to avoid incurring that harm." 18 U.S.C. § 1589(c)(2).

Relators' assertion that they "reasonably believed . . . they had no choice" but to remain employed at the KMSF because of "ManTech's threat of severe financial penalties" fails to plausibly support a forced labor claim. SAC ¶ 249. Relators do not contend that they were forced to work for ManTech against their will. To the contrary, they admit that they voluntarily accepted employment with ManTech in which they agreed to go work at the KMSF in Kuwait in exchange for generous hourly wages and other pay. *See. e.g.*, SAC ¶¶ 160-62*; see also* Lewis Decl. Ex. 1 at 4; Ex. 7 at 2; Ex. 11 at 2; Ex. 16 at 2; Ex. 21 at 2. One of the obligations they agreed to incur was an obligation to reimburse ManTech for certain sponsorship and training-related expenses if their employment was terminated prior to 24 months.[31] SAC ¶¶ 160-62. But relators agreed to this

[31] Provisions requiring an employee to reimburse an employer for certain costs are unremarkable, and certainly there is no law suggesting it would create conditions of forced labor. *See, e.g.*, *McCauley v. Raytheon Travel Air Co.,* 152 F. Supp. 2d 1267, 1272-73 (D. Kan. 2001) (training reimbursement agreement required pilots to reimburse Raytheon for training costs if they quit within one year of receiving training); *Nat'l Training Fund for Sheet Metal & Air Conditioning Indus. v. Maddux*, 751 F. Supp. 120, 121 (S.D. Tex. 1990) ("As society has become more mobile and the workplace more technical, workers may agree that they will reimburse the company or

provision voluntarily and, in any case, do not allege that ManTech sought to collect such funds from them or anyone else.

Likewise, relators' allegations that they were subjected to "horrific" work conditions fail to state a TVPRA claim.[32] SAC ¶¶ 226-260. At most, relators allege that they suffered various injuries ***as a result of working at the KMSF***;[33] they do not allege that ManTech subjected them to serious harm or threatened them with serious harm as a means of forcing them to stay in their jobs. Similarly, while relators contend that they were "victims of wage theft," SAC ¶ 252, they again fail to connect the alleged harm they suffered to any intent on ManTech's part to coerce them into remaining employed at the KMSF. At most, relators have alleged that ManTech violated Kuwaiti labor laws by failing to pay them overtime wages, in amounts as small as $112.00.[34] *See* SAC ¶ 258. In short, the type of harm alleged by relators in the SAC is not the type of harm covered by the TVPRA. *See Muchira*, 850 F.3d at 622.

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union for valuable training, but only up to the line of recompense."); *see also Gordon v. City of Oakland*, No. 08-CV-1543, 2008 WL 2948663, at *4 (N.D. Cal. July 24, 2008) ("[T]here is nothing inherently unlawful when an employer requires its employees to pay the cost of training because the training itself is a condition to employment."); *Wilson v. Clarke*, 470 F.2d 1218, 1223 (1st Cir. 1972) ("Doubtless an employer who has provided specialized training to an employee -- as by a course of studies or the like -- might reasonably contract with the employee for reimbursement if the employee should quit before the employer achieves any benefit. However, the employer may not require its ex-employee to make payment to it unrelated to the employer's damage, simply as a penalty to discourage or punish a job change.").

[32] As discussed *infra* in Section VI, these claims are also preempted by the Defense Base Act.

[33] As noted *supra* in n.3, relators have not identified any provision in the Solicitation or contract stating that ManTech was responsible for maintaining the KMSF, a U.S. Government facility.

[34] These allegations are yet another example of relators' attempt to resuscitate previously-failed claims by repurposing the same allegations in support of a different cause of action. For instance, in relators' original complaint, they asserted an FCA claim based on ManTech's alleged violation of the Service Contract Act. *See, e.g.*, ECF No. 1 ¶¶ 59-69. Although they have since abandoned their Service Contract Act claims upon learning that the Act does not apply extraterritorially, they are now trying to recast the same allegations as stating a claim of forced labor under the TVPRA. *Compare id.* ¶ 177, *with* SAC ¶¶ 255-58. The constantly-evolving nature of relators' claims further evidences their inability to plausibly plead any claims against ManTech.

Moreover, "when considering whether an employer's conduct was sufficiently serious to coerce the victim to provide labor or services against her will, [a court] must also consider the particular vulnerabilities of a person in the victim's position." *Muchira*, 850 F.3d at 618 (quotation marks and citations omitted). Relators are not "especially vulnerable victim[s]" such that they would not understand the terms and risks of their employment. *See id.* at 618-20 ("Typically . . . 'forced labor' situations involve circumstances such as squalid or otherwise intolerable living conditions, extreme isolation (from family and the outside world), threats of inflicting harm upon the victim or others (including threats of legal process such as arrest or deportation), and exploitation of the victim's lack of education and familiarity with the English language, all of which are 'used to prevent [vulnerable] victims from leaving and to keep them bound to their captors.'") (alteration in original) (citation omitted).

Relators are all experienced mechanics; they do not allege they were forced into the employment relationship under duress or had any vulnerability that was intentionally exploited by ManTech. Some of the relators even worked at the same military facility in Kuwait for different employers prior to their employment with ManTech. *See* SAC ¶¶ 171, 178, 196, 199, 205. Relators even received a "hardship allowance" while they were working in Kuwait. *See* Lewis Decl., Ex. 1 at 4; Ex. 7 at 2; Ex. 11 at 2; Ex. 16 at 2; Ex. 21 at 2. In short, relators' allegations merely mischaracterize their employment relationship with ManTech as a "forced labor" scheme. This is insufficient to state a claim under the TVPRA. *See Panwar v. Access Therapies, Inc.*, No. 12-CV-619, 2015 WL 1396599, at *3 (S.D. Ind. Mar. 25, 2015) ("While Plaintiffs continually refer to their employment with Access Therapies and RN Staff as a 'forced labor scheme,' the fact that they voluntarily entered into the employment contracts belies this characterization. There is no evidence that Mr. Panwar or Mr. Agustin were coerced or deceived into signing the employment

agreements with Defendants."); *Muchira*, 850 F.3d at 620 (rejecting forced labor claim where, *inter alia*, plaintiff "was able to read the contract for her employment in the United States, she reviewed the terms of the contract with [her employer] before signing it, and she came to the United States voluntarily with full knowledge" of the contract's terms).

For these reasons, relators' claims of forced labor fail to rise to the level of plausibility required to state a TVPRA claim.[35]

VI. RELATORS' TVPRA CLAIMS ARE ALSO PREEMPTED BY THE DEFENSE BASE ACT

In Count IV, relators also seek damages under the TVPRA for the alleged harm they suffered due to "horrific . . . work conditions" at the KMSF. SAC ¶ 226. Relators allege that they "experienced immediate and long-term ill-health effects from . . . exposure to toxic pollution at the KMSF," including "headaches, respiratory distress, sinus congestion, mucus expectoration, and burning in their eyes and throat during the time that they worked at the KMSF." *Id.* ¶ 247. The Court lacks subject matter jurisdiction over such claims, however, because they are barred by the exclusive remedy and penalty provisions of the Defense Base Act, 42 U.S.C. § 1651 *et seq.*

The DBA establishes a uniform, federally administered workers' compensation scheme for employees of civilian contractors who are injured while working under government contracts performed outside the United States. *See* 42 U.S.C. §§ 1651(a), 1651(a)(4), 1651(b)(1); *see also Brink v. Cont'l Ins. Co.,* 787 F.3d 1120, 1124-27 (D.C. Cir. 2015) (affirming dismissal of RICO

[35] Notwithstanding relators' failure to state a claim, relators erroneously seek restitution under the mandatory restitution provision of the TVPRA. *See* SAC ¶¶ 261-63 (relying on 18 U.S.C. § 1593). That provision, however, applies only to ***criminal*** cases, and is thus not a proper basis for relief in a civil action. *See, e.g.*, *In re Sealed Case*, 702 F.3d 59, 66 (D.C. Cir. 2012) ("Because the appellant *pleaded guilty* to 18 U.S.C. § 1591, the district court was required to impose restitution under 18 U.S.C. § 1593.") (emphasis added); *United States v. Fu Sheng Kuo*, 620 F.3d 1158, 1164 (9th Cir. 2010) ("Section 1593 applies . . . *only* to cases in which a defendant has been *convicted* of an offense under the Trafficking Act.") (first emphasis in original).

and various tort claims as preempted by the Defense Base Act); *Sickle v. Torres Advanced Enter. Sols., LLC,* 884 F.3d 338, 348 (D.C. Cir. 2018) (affirming dismissal of plaintiff's tort claims as preempted by the Defense Base Act). The DBA is designed to strike a compromise between employers and their employees. *See Morrison-Knudsen Constr. Co. v. Dir., Office of Workers' Comp. Programs*, 461 U.S. 624, 636 (1983). "Employers relinquish[] their defenses to tort actions in exchange for limited and predictable liability," and "[e]mployees accept the limited recovery because they receive prompt relief without the expense, uncertainty, and delay that tort actions entail." *Id.* (citation omitted). The DBA includes a provision making an employer's liability "exclusive and in place of all other liability[.]" *See* 42 U.S.C. § 1651(c). Thus, the DBA's exclusivity provision bars Plaintiffs from seeking any other relief for injuries. *Id.*

The DBA requires individuals to exhaust administrative remedies before litigating their claims in federal court. *See Brink*, 787 F.3d at 1127-28. Relators have not previously filed any DBA claims against ManTech arising out of their employment at the KMSF. *See* Lewis Decl. at ¶ 25.[36] They cannot now circumvent the DBA through "artful pleading" by recasting their purported claims as TVPRA claims. *See Chicago & N.W. Transp. Co. v. Kalo Brick & Tile Co.*, 101 S.Ct. 1124, 1134 (1981) ("[I]ntent of Congress [to regulate a field] cannot be avoided by mere artful pleading."); *Int'l Bhd. of Teamsters Chauffeurs, Warehousemen & Helpers of Am. v. Ass'n of Flight Attendants*, 663 F. Supp. 847, 850–51 (D.D.C. 1987) (plaintiff cannot circumvent federal jurisdiction under the Labor Management Relations Act through artful pleading by attempting to recast federal claims as state claims).

[36] Because this is an issue of subject matter jurisdiction, the Court may consider documents outside of the Second Amended Complaint. *See, e.g.*, *Masoud v. Suliman*, 816 F. Supp. 2d 77, 80 (D.D.C. 2011) ("[I]n deciding a Rule 12(b)(1) motion, it is well established in this Circuit that a court is not limited to the allegations in the complaint, but may also consider material outside of the pleadings.") (citation omitted).

For instance, in *Fry v. Napoleon Community Schools*, 137 S. Ct. 743 (2017), the Supreme Court of the United States addressed the issue of whether a plaintiff's claim fell under the Individuals with Disabilities Education Act ("IDEA"), which, like the DBA, required the exhaustion of administrative remedies, or whether the claim fell under the ADA. *Id.* In determining what statute plaintiff's claim fell under, the *Fry* Court stated that the focus should be the "substance" rather than the labels used in the plaintiff's complaint and that "[w]hat matters is the . . . gravamen . . . of the plaintiff's complaint, setting aside any attempts at artful pleading." *Id.* at 755. The Court in *Fry* remanded the matter to the lower court to determine whether the "gravamen" of the plaintiff's complaint sought relief under the IDEA, "even if not phrased or framed in precisely that way." *Id.*

The analysis set forth in *Fry* is instructive in determining the "gravamen" of relators' allegations here. As the Court in *Fry* noted, "[a]ny other approach…would allow plaintiffs to evade the Act's restrictions through artful pleading." *Id.* (internal quotations and citation omitted). When one focuses on the substance of relators' allegations, it is apparent that, insofar as their claims concern alleged physical injuries, the "gravamen" of those claims relates to alleged injuries that are compensable, if at all, under the DBA. Relators devote nearly six full pages to describing the alleged work environment at the KMSF.[37] *See* SAC ¶¶ 226-49; *see also, e.g.*, *id.* ¶ 226 ("The air was putrid and thick with suffocating smoke and fumes from a variety of sources."); *id.* ¶ 242 ("Each day, an ever-increasing black cloud of toxic smoke filled with caustic chemicals gathered with the KMSF because the ventilators had been turned off."); *id.* ¶ 246 ("Smoke and particulate

[37] Again, relators have not identified any provision in the Solicitation or contract stating that ManTech was responsible for maintaining the KMSF, a U.S. Government facility. *See supra* n.3. Additionally, some of the relators had prior experience in the KMSF and thus would be familiar with the conditions in that facility. In any event, there is nothing about these alleged conditions that turns relators' voluntary, well-compensated employment, into "forced labor."

matter were discharged from multiple sources, including arc-welding of CARC paint-coated MRAP vehicle bodies, exhaust from running vehicle engines, dust from the grinding down of CARC paint and metallic parts, and other sources of toxicity."). Relators then go on to allege that they suffered various "immediate and long-term ill health effects" as a result of these work conditions, including "headaches, respiratory distress, sinus congestion, mucus expectoration, [] burning in their eyes and throat[,] . . . [and] chronic, daily nose-bleeds." SAC ¶¶ 247-48. In connection with these alleged injuries, relators seek compensatory and various other types of damages. *See* SAC at 68 (WHEREFORE clause).

In short, it is apparent that the "gravamen" of relators' TVPRA claims concern alleged physical injuries suffered while working in Kuwait in connection with the CLSS contract. *Fry*, 137 S. Ct. at 755. Because the DBA provides the exclusive remedy for such injuries, it "leaves no room" for relators' TVPRA claims here. *Brink*, 787 F.3d at 1127 (citation omitted).

VII. CONCLUSION

For the foregoing reasons, ManTech's Motion to Dismiss should be granted, and the Second Amended Complaint should be dismissed in its entirety with prejudice.

Respectfully submitted,

/s/ Roderick L. Thomas
Roderick L. Thomas (D.C. Bar # 433433)
P. Nicholas Peterson (D.C. Bar # 982276)
Wiley Rein LLP
1776 K Street, NW
Washington, DC 20006
Tel: (202) 719-7000
Fax: (202) 719-7049
rthomas@wileyrein.com
ppeterson@wileyrein.com

Counsel for Defendants

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