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.*,

*Defendant*s.

Civil Action No. 15-2105 (ABJ)

Relator/Plaintiffs Larry Hawkins, Randall Hayes, Clinton Sawyer, James Locklear and Kent Nelson's

OPPOSITION TO THE MOTION TO DISMISS THE SECOND AMENDED COMPLAINT

filed by Defendants ManTech International Corporation and ManTech Telecommunications and Information Systems Corporation

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CASES[1]

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Relator/Plaintiffs Larry Hawkins, Randall Hayes, Clinton Sawyer, James Locklear and Kent Nelson ("Relators"), respectfully submit this opposition to the Motions to Dismiss ("MMD") of Defendants ManTech International Corporation and ManTech Telecommunications and Information Systems Corporation's (collectively, "ManTech"). ManTech's motion should be denied because Relators' complaint adequately states claims for violations of the False Claims Act ("FCA") and the Trafficking Victims Protection Reauthorization Act ("TVPRA").

I. INTRODUCTION

The MMD reveals ManTech's base value system, *i.e.*, its view that "the end justifies the means." ManTech asserts that the only thing that matters to the United States, the only thing that is "material," is the quality of the repairs that were made to the Mine-Resistant Ambush Protected ("MRAP") vehicles under Contract W56HZV-12-C-0127 ("Contract"). MMD at 2 ("in their almost seventy-page SAC, relators do not allege even once that a single military vehicle was improperly maintained or repaired by ManTech[.]"; *see also id.* at 20 ("***there is not a single allegation in the SAC that any MRAP vehicles were improperly maintained or repaired***." (emphasis in original)).

To ManTech, all the lies that it told while performing the Contract are, in the end, irrelevant or immaterial. It does not matter, for example, that ManTech systemically and deliberately misreported the labor hours used to service the MRAPS even though such labor hours were used by the United States the unit-measure for determining performance efficiency as well as a basis for the award of future contract options. It also does not matter to ManTech that it misreported its labor hours in order to hide the inefficiency of its untrained workforce and its false claims regarding that workforce's qualifications to service MRAPSs. ManTech is unconcerned that its misreported labor hours polluted the readiness data collected by the Army's Standard Army

Maintenance System-Enhanced ("SAMS-E") data management system, a mission critical combat support system. ManTech is unapologetic for its confiscation of Relators' passports, its flagrant violations of Kuwait's immigration and employment laws, its threats of financial reprisal for premature departures from Kuwait, and its unwillingness to protect these boxed-in U.S. citizens from exposure to noxious chemicals. Adding insult to injury, ManTech brazenly belittles Relators for not escaping from ManTech's clutches when provided the brief opportunity to do so. MMD at 38, n. 30.

Through the MMD, however, ManTech goes beyond publicizing its *own* code of ethics. The MMD asks this Court to adopt a "it-does-not-matter-because-the-end-justifies-the-means" code of conduct as a statement of *law*. This approach should be rejected by the Court. Because Relators have met the pleading requirements of the FCA and the TVPRA, the MMD should be denied.

II. RELATORS ADEQUATELY PLEAD VIOLATIONS OF FCA AND TVPRA

This *qui tam* FCA action, filed against a military contractor attempting to profit from the distraction caused by the government's war-fighting obligations, fits squarely within the ambit of traditional FCA claims. *See Universal Health Servs., Inc. v. United States ex rel. Escobar*, _U.S._; 136 S. Ct. 1989, 2000-02 (2016) ("Enacted in 1863, the False Claims Act was originally aimed principally at stopping the massive frauds perpetrated by large contractors during the Civil War.").

The elements of FCA liability are: (1) a false statement or fraudulent course of conduct, (2) made with scienter, (3) that was material, causing (4) the government to pay out money or forfeit moneys due. *United States ex rel. Campie v. Gilead Scis., Inc.*, 862 F.3d 890, 907 (9th Cir. 2017), *cert. denied sub nom.*, No. 17-936, 2019 WL 113075 (U.S. Jan. 7, 2019); *Escobar*, 136 S. Ct. at 2000-02. Claims brought under the FCA are subject to the heightened pleading standard in

Federal Rule of Civil Procedure 9(b). *United States ex rel. Heath v. AT & T, Inc.*, 791 F.3d 112, 124 (D.C. Cir., 2015).

A. Relators Adequately Pleaded a Violation of the FCA with Respect to the Reporting of Labor Hours

1. Relators' Labor Hour FCA Claims are Pleaded with Particularity

a. Background on the Particularity Requirement of the FCA

After objecting to the length of the complaint and denigrating Relators for voluntarily amending their complaint to address anticipated *Iqbal*, *Twombley*, and FED. R. CIV. 9(b) objections, ManTech pivots to claim that it still does not have enough information to prepare a defense to Relators' FCA complaint. This lament is nonsensical. "The main purpose of Rule 9(b) is to ensure that defendants have notice of the charges against them adequate to prepare a defense." *United States ex rel. Barrett v. Columbia/HCA Health Care*, 251 F. Supp. 2d 28, 34 (D. D.C. 2003). The significant detail provided by Relators is more than enough for ManTech to prepare a defense.

ManTech complains to the Court that the SAC lacks "the who, what, when, where, and how with respect to the circumstances of the fraud." MMD at 8 (citing *United States ex rel. Conteh v. IKON Office Solutions, Inc.*, 103 F. Supp. 3d 59, 64 (D. D.C. 2015)). ManTech is wrong. As was true in *United States v. Kellogg Brown & Root Servs., Inc.*, 800 F. Supp. 2d 143 (D. D.C. 2011) (cited by ManTech) and as is described in detail by Relators in the sections below that identify with precision the paragraphs in the SAC that state each FCA claim with the requisite particularity,[2] Relators satisfy the Rule 9(b) standard. Even on a generalized level, however, "the complaint adequately alleges the 'who' ([ManTech International acting through John Gaurnieri,

[2] *See* Sections II (A)(1)(b) -(c); (B)(1); (C)(1); and (D)(1), *infra*.

Ret. Colonel John Danks, Scott Campbell, and Bud Delano], the 'what' ([false claim of labor hours worked, false data entered into SAMS-E, false representations of employee qualifications, false claims of compliance with human trafficking prohibitions]), the 'when' (between [2012 and 2013]), the 'where' ([in Kuwait at the KMSF]), and the 'how' ([by directing employees to misreport labor hours so as to hide the massive inefficiencies of its untrained workforce; seizing Relators' passports and orchestrating a systemic abuse of Kuwait's immigration and labor laws; threatening financial, reputational, and long-term economic reprisal for unauthorized departures from Kuwait; and subjecting employees to illegal and inhumane work conditions]) of the alleged fraud." *Kellogg*, *supra* 800 F. Supp. 2d at 153.

Ignoring the massive detail in the pleadings, ManTech insists on more. ManTech states, "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." MMD at 10. ManTech provides a wish-list, conveniently in table format, of information it claims it still needs in order to defend against the complaint. *Id.* at 11-13.

In ManTech's world, an FCA claim cannot be made until a complete relators' team has been assembled with members who can testify, from personal knowledge, on every outstanding contention of fact that will be visited in such litigation: team members who can testify with personal knowledge that ManTech's lies or omissions were, or were not, printed on the face of invoices, MMD at 10; other team members with personal knowledge who can testify that ManTech's accounting records reflect sums-certain received on dates-certain reflecting actual payments to ManTech by the government, MMD at 11; relators with personal knowledge of the

exact number of untrained employees hired by ManTech including such employees' start and termination dates, MMD at 19; and still other team members with personal knowledge who can testify about how the MRAPs that were serviced by ManTech's fast-food-trained employees withstood the stress of combat, MMD at 20. But, as the U.S. Court of Appeals for the District of Columbia Circuit has taught, "[t]hat goes too far. Rule 9(b) does not inflexibly dictate adherence to a preordained checklist of 'must have' allegations." *Heath*, 791 F.3d at 125. "Instead, the point of Rule 9(b) is to ensure that there is sufficient substance to the allegations to both afford the defendant the opportunity to prepare a response and to warrant further judicial process." *Id.*; *see also United States ex rel. Reidel v. Bos. Heart Diagnostics Corp.*, 332 F. Supp. 3d 48, 80 (D. D.C. Sept. 12, 2018) ("This Court agrees with its colleagues that requiring a concrete example of the alleged fraud would 'require claimants to essential [*sic*] provide detailed proof of their allegations,' which is not required 'on a 9(b) motion to dismiss.'" (citation omitted)). The D.C. Circuit has squarely addressed ManTech's protest regarding invoices by pointing out that "[t]he federal government itself already has records of those payments and thus 'rarely if ever needs a relator's assistance to identify claims for payment that have been submitted.'" *Heath*, 791 F.3d at 125 (citations omitted). With respect to such invoices, the question is better framed as "whether the complaint alleges 'particular details of a scheme to submit false claims paired with reliable indicia that lead to a strong inference that claims were actually submitted.'" *Id*. at 126 (citation omitted).

ManTech also takes issue with some of Relators' allegations that are prefaced with the words "on information and belief." MMD at 9-10. ManTech spins Relators' allegations in this regard as "speculation and innuendo." *Id.* at 9, n.7. However, as *United States ex rel. Conteh v. IKON Office Solutions, Inc.*, 103 F. Supp. 3d 59, 66 (D. D.C. 2015) (cited by ManTech at MMD 7-8, 10-13, 19) explains the view of the District of Columbia Circuit – "'the Twombly plausibility

standard . . . does not prevent a plaintiff[/relator] from 'pleading facts alleged upon information and belief' where the facts are peculiarly within the possession and control of the defendant, or where the belief is based on factual information that makes the inference of culpability plausible.'" (citations omitted).

Where Relators have pleaded "on information and belief" it is because the specific information is "peculiarly" within ManTech's possession and control: corporate merger information (SAC ¶18); whether or not ManTech reported labor hours during the "phase in" and "Operational Readiness" periods of contract performance (SAC ¶¶44, 45); the altered timesheets that would explain the incongruity between the hours Relators knew that they had worked and the hours that ManTech claimed were the basis for their termination (SAC ¶¶47, 55, 68,); the communications between ManTech and the Army about the importance of SAMS-E and the purpose for the Army lending its SAMS-E systems to ManTech (SAC ¶98); the personnel records documenting the pre-hiring qualifications of its workforce (SAC ¶131); and the contracts of other ManTech employees (SAC ¶¶154, 280). ManTech's exclusive control of important evidence also makes it impossible for these five mechanics to provide "information about when unqualified mechanics were hired, how many such mechanics there were, or how long they worked in the KMSF." MMD at 19. The certainty with which Relators make their claim that such information is unquestionably in the possession of ManTech definitely surpasses the mere "rumors" of the existence of such information that was the basis for the ruling in *United States ex rel. Bogina v. Medline Indus., Inc.*, 809 F.3d 365, 370 (7th Cir. 2016) (cited by ManTech in its MMD at 11). *See also United States ex rel. Head v. Kane Co.*, 798 F. Supp. 2d 186, 203 (D. D.C. 2011) ("Where a 'scheme spans several years,' 'Rule 9(b) does not require plaintiffs to allege every fact pertaining

to every instance of fraud. . . ."). Indeed, "For fraudulent schemes that are particularly complex or extensive, Rule 9(b)'s pleading requirements may be further relaxed." *Id.* (Citations omitted).

b. Recitation of Particularized Facts Common to all FCA Claims

MRAP vehicles are some of most expensive and effective pieces of mobile military hardware in the U.S. Army's arsenal. SAC ¶¶2-4, 117. In an urgent decision, MRAPs were deployed to Afghanistan and Iraq to save lives who were being targeted by Improvised Explosive Devices ("IEDs") on those battlefields. *Id.* at ¶3.

On May 31, 2012, the U.S. Army entered into the Contract with ManTech to service these combat-deployed MRAPS. SAC ¶5. As the SAC details, the initial stage of the Contract was only a trial period that would inform the Army about whether or not it would award subsequent, more lucrative contract options. *Id.* at ¶¶23, 29, 31-33, 40, 48. A significant metric by which the Army would judge ManTech's performance was the time efficiency that ManTech brought to the repair and servicing of these combat vehicles. *Id.* at ¶¶25, 28, 29-40. Given their life-saving mission and value, the U.S. insisted that only qualified mechanics service these vehicles. *Id.* at ¶¶118-120. Relators Hawkins, Hayes, Sawyer, Nelson, and Locklear were such qualified mechanics. *Id.* at ¶¶51, 59, 124, 196, 205. Some of them worked on the MRAPs in Kuwait prior to ManTech taking over maintenance of these vehicles via the Contract. *Id.* at ¶¶51, 178, 196, 205.

ManTech's own contract managers have alleged that it intentionally under-estimated the costs of performing the contract in order to win the bid. *See Cody v. ManTech Int'l* No. 1:16-cv-00132 (E.D. Va. filed Feb. 10, 2016) (¶¶18, 179 ["ManTech developed [a] strategy to lower its labor rates for professional services and reduce its fringe costs by over $12 million in order to win the new contract . . .]"). Presumably to cut its costs, ManTech hired employees who were wholly unqualified to work on MRAPs. SAC ¶¶8, 9, 48, 49, 52, 54, 107, 123, 127, 140-42. The presence

of the unqualified "mechanics" dramatically slowed repair efficiency. *Id.* at ¶¶52, 141. Having hired unskilled workers, perhaps having under-bid the commitment in the first instance, ManTech was motivated to hide the actual number of hours its crew was taking to work on the MRAPs. *Id.* at ¶¶8, 48-85. As Relators have disclosed, ManTech ordered its workforce to mischaracterize the hours worked so as to underreport the number of labor-hours reported to the Army. *Id.* at ¶¶46-85. Relators were fired because they did not lie to the United States about their direct-labor man hours. *Id.* at ¶¶60-76.[3] Presumably also to cut its costs (by relying on a British company, Millbrook, to coordinate "visa runs," as is alleged in the SAC at ¶183, rather than complying with Kuwait's Private Sector Labor Law, *id.* at ¶¶163, 164, 250-52), ManTech engaged in a systematic abuse Kuwaiti immigration and employment law, *id.* at ¶155,163-177, U.S. law, and international customary law (by confiscating its employees' passports), *id.* at ¶¶7, 150, 170, 173, 175, 176, 181, 193, 195, 209, 216, 219, 223, 249, 260, 267, 270, 271, 277, 278; converting those employees into criminals in their host country, *id.* at ¶¶7, 156, 167, 168, 194, 195, 203, 213, 214, 223, 225, 249, 260, 286; subjecting those employees to arrest, incarceration, deportation, and a life-time ban on working in a Gulf-Cooperation country, *id.* at ¶¶167, 168, 210, 225, 260; financial hardship visited upon them in the form of penalties in excess of $15,000.00 for leaving Kuwait without ManTech's permission, *id.* at ¶¶156, 159, 160, 194, 245, 249, 260; physical harm in the form of illegal and

[3] The representation on the first page of the MMD that Relators were fired "for cause" and that "[t]his action arises out of the termination of five former employees" ignores both the allegations of this complaint and the procedural history leading to the filing of this action. Hawkins, Hayes, Sawyer, Nelson, and Locklear initially fought the pretextual nature of their termination through a lawsuit filed in the United States District Court for the Eastern District of Virginia. Once they recognized the enormity of the fraud committed against the United States and the deliberate choice by ManTech to violate prohibitions on forced labor, they voluntarily dismiss those claims in favor of claims brought on behalf of the United States.

toxic exposure to deadly isocyanate-filled CARC fumes, *id.* at ¶¶227-249; and reputational harm that would have been realized for having been fired for leaving their work. *Id.* at ¶¶194, 245.

c. Particularized Facts with Respect to Reporting of Labor Hours

Relators have detailed how, while working "at the Kuwait Maintenance Sustainment Facility ('KMSF') adjacent to Highway 40 to the south of Kuwait City" (SAC ¶5) during the period 2012-2013 (*id.* at ¶¶12-16) under the direct supervision of ManTech managers John Gaurnieri, Ret. Colonel John Danks, Scott Campbell, and Bud Delano (*id.* at ¶¶60-64, 66, 67, 72, 202), Relators and their coworkers were directed by these managers to mis-record their labor hours (*id.* at ¶¶48, 52-58, 60-72). As just one example of the particularized detail provided in the SAC, ManTech manager Bud Delano ("Delano") directed Relator Hayes to instruct the members of his "line" of employees to mis-record their hours. *Id.* at ¶¶59-65. Relator Hayes refused to obey Delano's instruction. *Id.* at ¶60. Hearing of Hayes's refusal, Delano *himself* visited Hayes's line and gave the order to misreport time. *Id.* at ¶61. When Delano learned that, after his departure, Hayes separately informed his men that it was illegal to misreport time, Delano removed him as a line manager and replaced him with a man named Marvin Holt. *Id.* at ¶¶62-65. The SAC also relates how the sufficiently trained and experienced mechanics such as Relators were forced to mentor the large number of unqualified ManTech employees so that work on the MRAPs could proceed. *Id.* at ¶52. This reduced the efficiency of the work on the Contract and caused the unnecessary accumulation of labor hours. *Id*. Relator Hawkins, elevated into the ManTech management team in February 2013 based on his experience, detailed how he witnessed the ManTech managers lie directly to U.S. Army officers visiting the KMSF regarding ManTech's efficiency in repairing the MRAPs. *Id.* at ¶¶57, 58.

2. Relators Adequately Alleged that ManTech's False Labor Hour Claims Were Materially False

a. Background on the Requirement to Plead Plausible Materiality for a Valid FCA Claim

The FCA defines "material" as "having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property." 31 U.S.C. § 3729(b)(4). This definition is derived from "common-law antecedents," *Escobar*, 136 S. Ct. at 2002 (citation omitted), such that, under both the FCA and the common law, "materiality look[s] to the effect on the likely or actual behavior of the recipient of the alleged misrepresentation." *Id.* at 2002-03 (citation omitted).

While *Escobar* did not rule out the possibility that materiality could be decided on a motion to dismiss, 136 S. Ct. at 2004 n.6, it did not suggest that the issue should be routinely decided at that stage, *see United States v. Gaudin*, 515 U.S. 506, 512 (1995) (explaining that materiality is peculiarly one for the trier of fact). ManTech would like to elevate Footnote 6 in *Escobar* to be on par with the clearly enunciated expression of implied FCA liability on the first page of that opinion. MMD at 15. Yet, read in the context of the Supreme Court's rulings in *Twombly* and *Iqbal*, the take-away is that *Escobar* Footnote 6 countenances FCA pleading dismissal only where the complaint is so implausible or devoid of factual allegations that it should be dismissed under Rule 12. By denying *certiorari* in *Gilead*, 2019 WL 113075, and letting stand the Ninth Circuit's reversal of the trial court's materiality-based dismissal at the pleading stage, the Supreme Court suggests that any *fact-based* analysis of materiality should not be decided under Rule 12 stating, "[t]he issues [of materiality] raised by the parties here are matters of proof, not legal grounds to dismiss relators' complaint." *Campie* 862 F.3d at 907. That is, *Campie* sets the standard for materiality as "relators alleg[ing] more than the mere possibility that the government would be

entitled to refuse payment if it were aware of the violations sufficiently pleading materiality at this stage of the case." *Id*.

This Circuit has stated, "*Escobar* makes clear that courts are to conduct a holistic approach to determining materiality in connection with a payment decision, with no one factor being necessarily dispositive." *Heath*, 791 F.3d at 109. *Escobar* identifies a variety of factors that might be taken into account in the materiality analysis. *Escobar* 136 S. Ct. at 2003. For example, in considering materiality, "the Government's decision to expressly identify a provision as a condition of payment is relevant, but not automatically dispositive." *Id*. Materiality might also be established by "evidence that the defendant knows that the Government consistently refuses to pay claims in the mine run of cases based on noncompliance with the particular statutory, regulatory, or contractual requirement[.]" *Id*. Conversely, "if the Government pays a particular claim in full despite its *actual knowledge* that certain requirements were violated, that is very strong evidence that those requirements are not material." *Id*. (emphasis added).[4]

ManTech encourages the Court to abuse its discretion by suggesting that the decision by the United States Department of Justice to decline intervention in this case is evidence of lack of

[4] ManTech faces several challenges with respect to using continued payment as the barometer of materiality. First, ManTech would have to prove that the United States *actually knew* the full extent of its misrepresentations. Important in this analysis will be evidence that ManTech did or did not self-report its own FCA violations. Second, ManTech will have to demonstrate, particularly with respect to the TVPRA-based FCA claims, that any continued payment of invoices by a government contracting officer was not illegal (*see*, *e.g.*, Section (II)(E)(3), *infra*, "None of the funds made available [under the Department of Defense Appropriations Act] may be used in contravention" of TVPRA and the Trafficking Victims Protection Act of 2000. Department of Defense Appropriations Act of 2014, H.R. 2397, 113th Cong. § 8112 (2013-2014)). Third, ManTech would have to demonstrate that it had not placed the Army in the intolerable position of abruptly terminating the repair and return to battle of the critically-needed MRAPs upon which the lives of U.S. service women and men depended. ManTech is not entitled to inferences in its favor, and therefore none of these evidentiary issues can be decided at the pleadings stage.

materiality. MMD at 6, 7, 18.[5] Yet, (1) there is not a scintilla of evidence of what motive, if any, informed DOJ's decision; (2) the DOJ continues as co-counsel with the undersigned on behalf of the United States, the real party in interest, on these assigned claims; (3) continued prosecution of this action by Relators' counsel is entirely consistent with the statutory design of FCA; and (4) DOJ, if it thought that the claims at bar were groundless, could have exercised the authority granted under 31 U.S.C. § 3730(c)(2)(A) to dismiss the action. *See e.g. United States ex rel. Schneider v. J.P. Morgan Chase Bank*, No. 14-cv-1047, Memorandum Opinion [ECF 139] (D. D.C. Mar. 6, 2019); *United States ex rel. Kammarayil et al v. Sterling Operations, Inc. et al.*, No. 15-cv-01699, Memorandum Opinion [ECF 38] (D. D.C. Feb. 6, 2019).

ManTech's sleight-of-hand approach, to conflate non-intervention with lack of materiality, has been thoroughly rejected by the Sixth Circuit Court of Appeals, which held:

> The defendants argue that the government's decision not to intervene in this case indicates that the timing requirement is not material. This argument is unpersuasive. In *Escobar* itself, the government chose not to intervene, and the Supreme Court did not mention this as a relevant factor in its materiality analysis. On remand, the First Circuit held that the relators had sufficiently pleaded materiality, without reference to the government's declination of intervention.

[5] The MMD unfairly cherry-picked and edited a statement from the 36-page opinion in *United States ex rel. Folliard v. Comstor Corp*., 308 F. Supp. 3d 56 (D. D.C. 2018), where dismissal that was founded upon other grounds. MMD at 18. Specifically, after pointing out that the claims made in the relator's complaint were inconsistent with the exhibits attached thereto, the *Folliard* Court ruled, "the relator fails to sufficiently plead the existence of a false claim[.]" 308 F. Supp. 3d at 82. The Court also ruled that "the relator's allegations . . . fall far short of plausibly establishing falsity." *Id*. at 83. What is imprudent is that ManTech edited and misrepresented the quotation from Judge Howell. ManTech's quotation suggests that the case was dismissed on materiality grounds because the government had declined to intervene. Instead, the full quotation, following the Court's discussion of the importance of establishing materiality and its identification of various methods for doing so, is: "The requirement of demonstrating materiality *would seem* especially crucial here where 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." *Id*. at 86 (emphasis added). The Court's commentary on the importance of establishing materiality in the absence of government intervention is far from the court establishing non-intervention as a recognized measure of materiality *viz*. *Escobar*.

> Furthermore, the False Claims Act is designed to allow relators to proceed with a *qui tam* action even after the United States has declined to intervene. 31 U.S.C. §3730(d)(2). If relators' ability to plead sufficiently the element of materiality were stymied by the government's choice not to intervene, this would undermine the purposes of the Act.

United States ex rel. Prather v. Brookdale Senior Living Cmtys., Inc., 892 F.3d 822, 836 (6th Cir. 2018) (internal citations omitted).

b. Relators Sufficiently Pleaded Falsity of ManTech's Labor Hour Reporting

Under the FCA, a claim may be either factually false, "in which a . . . claimant submits information that is untrue on its face," *Kellogg Brown*, 800 F. Supp. 2d at 154, or legally false, in which the claim "rest[s] on a false representation of compliance with an applicable federal statute, federal regulation, or contractual term." *Id*. A legally false claim, "also known as a 'false certification,' can be either 'express' or 'implied."[6] *Id*. In the D.C. Circuit, materiality is a requirement for falsity, and not an independent element. *DynCorp*, 253 F. Supp. 3d at 100 n.2. Given that the particularized facts detail how ManTech explicitly instructed Relators and their coworkers to falsify the labor hours consumed working on the MRAPs, Relators adequately alleged that ManTech's labor hour reporting was false on its face or factually false. Moreover, as detailed *infra*, ManTech's false reporting of labor hours was materially false to the government.

ManTech attempts to diminish the offense of its false reporting of time by claiming, "At most, relators have alleged that ManTech did not fully comply with a contractual requirement

[6] As discussed *infra*, an implied false certification occurs when a claimant "makes representations in submitting a claim but omits its violations of statutory, regulatory, or contractual requirements." *Escobar*, 136 S. Ct. at 1999. In such cases, those omissions can be a basis for liability "'where certification was a prerequisite to the government action sought.'" *Kellogg Brown*, 800 F. Supp. 2d at 154 (quoting *SAIC*, 626 F.3d at 1266); *see also United States v. DynCorp Int'l, LLC*, 253 F. Supp. 3d 89, 100 (D. D.C. 2017) (a relator "can show falsity by demonstrating that (1) a contractor withheld information about its noncompliance with contractual or regulatory requirements; and (2) those contractual or regulatory requirements were material.").

regarding the reporting of hours[.]" MMD at 22. ManTech would like the Court to think that Relators do not know the difference between a failure to report and a lie. Had ManTech merely neglected to record its hours, then it would be in breach of contract. However, ManTech did not merely forget to count its hours. Instead, it chose to deliberately *lie* about the hours it worked, knowing that such lies would better position ManTech for award of more lucrative contract options, and that lying about labor hours would pollute the SAMS-E data intended to inform readiness calculations. It is this deliberate lying that distinguishes a False Claim Act case from a mere breach of contract case. *Cf. Kellogg*, *supra* at 155, "The FCA surely cannot be construed to include a run-of-the-mill breach of contract action that is devoid of any objective falsehood. To blur the distinction between fraud and breach of contract, then, is to contradict the purpose of the statute." (internal citations and quotation marks omitted).

3. Relators Adequately Alleged the Materiality of Accurate Labor Hour Reporting

Labor hours were the designated unit of exchange in the Contract. SAC ¶¶30, 33-39. The need for accurate reporting of labor hours is so important that it is mentioned 174 times in the Contract. *Id.* at ¶41. The government's award of contract options would be based on the government's assessment of ManTech's labor hours. *Id.* at ¶¶29-33. The importance of accurately recording data was exemplified by the Contract, Section 9, Page 8 of 388 that incorporated by reference of KSCR1-18 reciting a menu of data that had to be captured by ManTech. SAC ¶88. Given that labor hours expended would be the basis for the exercise of lucrative future contract options, ManTech had a significant motive to represent falsely its labor hour efficiency in servicing the MRAPS. *Id.* at ¶¶8, 48, 58. This systemic misrepresentation of labor hours worked "is necessarily material [because it] went to the very essence of the bargain." *See* MMD at 15. Thus, taken as a whole, Relators have pleaded plausible facts to the effect that had the government

discovered that ManTech was systemically misrepresenting the labor hours expended in performing the Contract, it would have terminated the contract and refused further payment.

4. Relators Adequately Alleged that ManTech Acted with the Requisite Scienter

a. Background on the Scienter Requirements of the FCA

Claims under Section 3729(a)(1)(A) and (B) of the FCA require allegations that the false claims were presented "knowingly." The FCA defines "knowingly" to mean "actual knowledge," "deliberate ignorance of the truth or falsity of the information," or "reckless disregard of the truth or falsity of the information." 31 U.S.C. § 3729(b)(1)(A); *see also United States v. Sci. Applications Int'l. Corp. ("SAIC")*, 626 F.3d 1257, 1266 (D.C. Cir. 2010) ("Actual knowledge looks at subjective knowledge, while deliberate ignorance seeks out the kind of willful blindness from which subjective intent can be inferred." (Citation omitted)). Reckless disregard is "an extension of gross negligence . . . an extreme version of ordinary negligence." *United States v. Krizek*, 111 F.3d 934, 942-943 (D.C. Cir. 1997). The reckless disregard standard "address[es] the refusal to learn of information which an individual, in the exercise of prudent judgment, should have discovered." *United States ex rel. Ervin & Assocs., Inc. v. Hamilton Sec. Grp., Inc.*, 370 F. Supp. 2d 18, 42 (D. D.C. 2005). Moreover, "a defendant is liable if it had . . . constructive knowledge of the falsity of its claims or statements." *United States v. Sci. Applications Int'l Corp.*, 958 F. Supp. 2d 53, 61-62 (D. D.C. 2013).

Proof of specific intent to defraud is not required in order to plead scienter. *DynCorp*, 253 F. Supp. 3d at 102. Though FCA allegations must be pleaded with particularity, Rule 9(b) itself "permits knowledge to be pled generally, there is no basis for dismissal for failure to plead knowledge with particularity." *United States ex rel. Groat v. Boston Heart Diagnostics Corp.*, 255 F. Supp. 3d 13, 29 (D. D.C. 2017) (quotation and citation omitted). Pursuant to Rule 9, a

relator may establish scienter by pleading how a company "institutionalized and enforced its fraudulent scheme." *United States ex rel. Folliard v. Comstor Corp*., 308 F. Supp. 3d 56, 89 (D. D.C. 2018) (citation omitted). *See also DynCorp*, 253 F. Supp. 3d at 103 (finding government adequately alleged scienter for an implied false certification claim based on, *inter alia*, statements by high-level employees of the defendant regarding knowledge of a contractual and regulatory violation).

The pleading in *Heath*, *supra*, has been cited as "illuminat[ing] the type of factual allegations necessary to plead that a corporate entity 'knowingly' engaged in fraud." *Folliard*, 308 F. Supp. 3d at 89. In *Heath*, the D.C. Circuit held that the relator sufficiently alleged that a telecommunications company falsely overbilled the FCC where the complaint pleaded that the company engaged "in institutionalized training and enforcement failures, . . . compounded by efforts at concealment," including by "ch[oosing] not to train its employees," so that "employees remained ignorant of the requirement" for proper billing . . . ." 791 F.3d at 124. The court clarified that a complaint must "make[] clear, in other words, that corporate levers were pulled . . . ." *Id*. at 125. The D.C. Circuit found these allegations satisfied the scienter requirement. *Id*. at 117, 126.

As set forth above, Relators have sufficiently alleged deliberate and/or reckless conduct sufficient to satisfy the pleading requirements for scienter.

b. Relators Adequately Pleaded Scienter with Respect to ManTech's Misrepresentation of Labor Hours

Far from "conclusory and unspecific allegations," MMD at 25, Relators allege in great detail a systemic scheme whereby ManTech, through its KMSF managers, institutionalized and enforced its scheme by instructing Relators to misreport he hours labored on the MRAPs. *See* allegations recited in Section II(B)(1)(c), *supra*. They have more than adequately alleged scienter.

B. Relators Adequately Pleaded a Violation of the FCA with Respect to the Input of Data into SAMS-E

ManTech attempts to confuse the Court by stating, "the SAC is also devoid of any factual allegations providing a concrete link between the SAMS-E system and any payments under the CLLS as contract." MMD at 22. To be clear, Relators do not allege that SAMS-E was used for billing purposes. Instead, Relators allege that ManTech lied about the labor hours it was obligated to report as part of performing the contract, knowing that these inaccurately reported hours would *also* be entered as data points into the SAMS-E system that the Army had installed at the KMSF. If ManTech's point is that its false statements about its labor hours give rise to two separate categories of FCA claims, ManTech is correct. That is because the accurate reporting of hours had an independent, material importance to the Army.

1. Relators' SAMS-E FCA Claims are Pleaded with Particularity

Relators incorporate by reference the recitation of particularly pleaded facts from Section (II)(A)(1)(b) and (c), *supra* into Relators' recitation of particularized facts relating to false SAMS-E data entries.

As is discussed in detail in the SAC, ManTech mechanics and technicians were required to fill-out time sheets that had specific SAMS-E codes that ManTech managers and employees knew were for use in SAMS-E data entry. SAC ¶100. Any misrepresentations of labor hour for billing purposes would also result in the entry of inaccurate SAMS-E data entry purposes. *Id.* at ¶¶101-102.

2. Relators Adequately Alleged the Falsity ManTech's SAMS-E Reporting

ManTech's instructions for its employees to deliberately misreport labor hours *ipso facto* meet the requirement of falsity under the FCA. As is demonstrated *infra*, these false statements were material to the United States.

3. Relators Adequately Alleged the Materiality of Accurate SAMS-E Data

Through particularized pleading, the SAC makes clear why accurate SAMS-E reporting is material to the United States. *See generally* SAC ¶¶89-100. As the SAC shows, the Army's SAMS-E data management system was designed for use by the Army's own mechanics. *Id.* at ¶90. SAMS-E "provides Warfighters around the world with automated management of equipment maintenance on everything from M-16 rifles to aircraft. Soldiers use SAMS-E to track asset and equipment life, order parts, interface with related logistics systems and much more. SAMS-E users can compile equipment readiness reports to provide operational command and control support to Army and Joint leadership. The system also enables effective Force and Fleet sustainment operations at the national level through consolidated equipment maintenance data." *Id.* at ¶91. Given the mission-critical, life-saving importance of the MRAP deployment to active combat zones, *id.* at ¶¶2-4, the accurate recordation of MRAP readiness data was so important to the Army that, contrary to normal practice, the award of the Contract was coupled with the installation of one of the Army's own SAMS-E systems. *Id.* at ¶90. The materiality of this SAMS-E data to the Contract is demonstrated by the fact that, contrary to most other contract jobs, the Army provided, at its own expense, SAMS-E terminals for use by ManTech so that ManTech could directly input data into SAMS-E on a real-time basis. *Id.* at ¶98. Accurate SAMS-E reporting is vital because SAMS-E "provides DoD with the ability to track asset and equipment life, order parts, and interface with related military logistics systems." *Id.* at ¶¶93. Accurate SAMS-E reporting is

material because SAMS-E data is the most important automated system to field maintenance managers. *Id*. Further, it provides critically important assistance for the military's front-line managers in dispatching of government equipment (SAC ¶¶94). The question posed for the Court is whether, upon discovering that ManTech deliberately fed false information into the Army's SAMS-E readiness calculator, the Army would continue business as usual with ManTech or stop payment to ManTech consequent to finding another vendor to assume the Contract. Relators have plausibly pleaded that the deliberate damage to the Army's readiness calculations through the pollution of the its SAMS-E system is sufficiently important to the Army that its discovery would have plausibly resulted in a termination of the Contract and refusal to make continued payment to ManTech.

4. Relators Adequately Alleged that ManTech Acted with the Requisite Scienter

Relators incorporate by reference the scienter analysis of Section II(B)(1)(c), *supra* and proffer that by meeting the scienter requirements for misreporting labor hours, Relators have met the requirements for scienter in the inaccurate reporting of SAMS-E data.

C. Relators Adequately Pleaded a Violation of the FCA with Respect to the Qualification of ManTech's Personnel

1. Relators' Personnel FCA Claims are Pleaded with Particularity

Relators incorporate by reference the recitation of particularly pleaded facts from Section (II)(A)(1)(b), *supra*. Relators have detailed how, while working at the KMSF adjacent to Highway 40 to the south of Kuwait City (SAC ¶5) during the period 2012-2013 (*id.* at ¶¶12-16) under the direct supervision of ManTech managers John Gaurnieri, Ret. Colonel John Danks, Scott Campbell, and Bud Delano (*id.* at ¶¶60-64, 66, 67, 72, 202), they were forced to work with newly-hired ManTech employees who were wholly unqualified to work on the multi-million-dollar

MRAPs (*id.* at ¶127). The SAC relates how a Mr. Green confessed to Relator Sawyer that he had been recruited from the Military Youth Corps and had no work experience other than working as a beautician and as a fast-food worker. *Id.* at ¶127.[7] James Locklear explains how his online qualification test required no ID-verification or other security measures that would ensure that the person taking the mechanic's test was the same person who was applying for the job. *Id.* at ¶130. Hawkins, Sawyer, and Locklear relate that some of the new hires they spoke to confessed to them that they had not taken the online qualification test themselves – that someone else had provided the answers for them, and that this abuse was widespread. *Id.* at ¶131. Locklear related how, from his position as a tool dispenser, he regularly witnessed the lack of knowledge of ManTech's new hires. *Id.* at ¶135. The SAC also provides detailed information about how the ManTech managers at the KMSF initially insisted that Mr. Sawyer assume a role of a certified welding inspector – a job that Mr. Sawyer declined repeatedly because he had no experience as a welder. *Id.* at ¶124-126. The SAC avers how the sufficiently trained and experienced mechanics such as Relators were forced to mentor the large number of unqualified ManTech employees to enable work on the MRAPs. *Id.* at ¶52. This reduced the efficiency of the work on the Contract and caused the unnecessary accumulation of labor hours. *Id*.

2. Relators Adequately Alleged the Falsity ManTech's Personnel Qualifications

Given the contractual obligation to provide only qualified mechanics for the repair and servicing of the valuable and mission-critical MRAPs, ManTech's employment of wholly

[7] ManTech writes: "It bears noting that ManTech has no record of a Michael Green ever being employed at the KMSF." MMD 19 n.12. By so stating, ManTech reveals that it has ready access to a database of former employees – which likely includes prior employment history, or at least one that reflects ManTech's due diligence prior to hiring such employees. Discovery will disclose whether Mr. Green goes by a different first name.

unqualified, untrained personnel, SAC ¶¶52, 124-127, 130, 131, 135, constitutes a false representation under the FCA. Moreover, as is established below, this flagrant falsity was material to the United States.

3. Relators Adequately Alleged the Materiality of ManTech's Misrepresentations with Respect to the Qualifications of its Personnel

Given the direct cost of each MRAP and the total cost of $47 billion dollars to deploy them for use in Afghanistan and Iraq (SAC ¶4), the Court may reasonably infer that the Army would not want personnel with no previous mechanic training, and whose most recent employment was as beauticians and fast-food workers (*id.* at ¶127), to touch, let alone service, one of these mission-critical MRAPs. To be clear however, the importance of having only adequately qualified personnel to service the MRAPs was reflected in the contracting process itself. The Contract solicitation[8] required ManTech to staff the KMSF with mechanics and technicians who were adequately trained to efficiently and effectively provide MRAP repair and maintenance services. *Id.* at ¶118. The Army made clear its insistence on qualified-only mechanics working on the MRAPs by requiring either (1) a certification of training from MRAP-U, or (2) a waiver to MRAP-U training earned through previous experience working on MRAPs. *Id.* at ¶118. In sum, obtaining the services of qualified mechanics to repair and maintain the multi-million-dollar MRAPs with the most efficient expenditure of labor hours, so as to return those mission-critical vehicles to battle as quickly as possible, was the "very essence of the bargain" between ManTech and the government as reflected in the Contract. Relators have plausibly pleaded that, had the government discovered that ManTech had brought to the KMSF to service the MRAPs persons who were

[8] Though ManTech has the executed contract, it has refused to share it with Relators. *See* MMD at 4, n.2. Accordingly, Relators are entitled to the reasonable inference that the quality controls identified in the solicitation were incorporated in the executed contract. *Huthnance v. Dist. of Columbia*, 722 F.3d 371, 378 (D.C. Cir. 2013).

unqualified to service these expensive vehicles (and lied about their labor hours to disguise their inefficiency), the Contract would have been cancelled and the government would not have made further payment to ManTech.

4. Relators Adequately Alleged that ManTech Acted with the Requisite Scienter

Relators adequately pleaded that ManTech acted with scienter in misrepresenting to the government the qualifications of ManTech's workforce, inasmuch as (1) ManTech had advanced knowledge of the importance to the government of ensuring that only qualified mechanics service its multi-million-dollar, mission-critical MRAPs (SAC ¶¶2-4, 117-120); (2) ManTech had complete control over the hiring of the personnel to work at the KMSF servicing MRAPs (*id.* at ¶¶154, 160-162, 279); (3) ManTech was responsible for ascertaining the qualifications of such employees (*id.* at ¶119); (4) the hiring of unqualified employees reflected "institutionalized training and enforcement failures," *Heath*, 791 F.3d at 122; and (5) ManTech falsely reported labor hours in order to conceal the phenomenal inefficiency of its untrained employees (SAC ¶¶48-85).

5. The Public Disclosure Bar Does Not Foreclose Relators' FCA Allegations with Respect to ManTech's Unqualified Workforce

ManTech's argument that the public disclosure bar applies likewise falls short. An "original source" is:

> an individual who either (i) prior to a public disclosure under subsection (e)(4)(a), has voluntarily disclosed to the Government the information on which allegations or transactions in a claim are based, or (2) who has 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).

A "two-part test" is used to determine whether the public disclosure bar applies. *Folliard*, 308 F. Supp. 3d at 70. "First, the court must determine whether the information underlying the

allegations and transactions has been publicly disclosed through enumerated channels." *Id.* (citation omitted). If so, then the court must determine whether the relator qualifies as an "original source." *Id.* ("'If—and only if—the answer to the first question is affirmative, will the court then proceed to the original source inquiry.'" (Citations omitted)); *see also id.* at 77 n.14 ("the conclusion that the relator's allegations are not based on publicly disclosed information precludes any need to 'proceed to the 'original source' inquiry'" (citation omitted)). Here, Relators' allegations are not based on publicly disclosed information; therefore, the public disclosure bar does not apply. However, even if so, the bar does not apply because Relators are original sources.

a. Relators' Allegations are Not Based on Publicly Disclosed Information

The public disclosure bar asks whether the relator's claims are "substantially similar" to allegations or transactions that were publicly disclosed. *United States ex rel. Davis v. District of Columbia*, 679 F.3d 832, 836 (D.C. Cir. 2012). The D.C. Circuit has held that the FCA "bars suits based on publicly disclosed 'allegations or transactions' not information." *Springfield Terminal Ry. v. Quinn*, 14 F.3d 645, 653 (D.C. Cir. 1994). Accordingly, the public disclosure bar is not triggered where the relator "supplied the missing link between the public information and the alleged fraud" by "rel[ying] on nonpublic information to interpret each [publicly disclosed] contract," and where "[w]ithout [relator's] nonpublic sources . . . there was insufficient [public] information to conclude" that the defendant actually engaged in the alleged fraud. *United States ex rel. Shea v. Cellco P'ship*, 863 F.3d 923, 935 (D.C. Cir. 2017).

i. *The Morgan Complaint Concerns a Different Contract*

Contrary to ManTech's assertion, MMD at 27-31, the *Morgan* complaint (MMD, Ex. B) does not provide the basis for the allegations in the instant matter. While the *Morgan* complaint notes, "*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 . . ."[9] MMD, Ex. B ¶33 (emphasis added), that contract was not the basis for the action. Rather, the *Morgan* complaint focused on "*contract M67854-07-D-5032* for MRAP vehicles to be deployed to and supported *in Afghanistan and Iraq*," especially considering that the relator in that case was only employed by ManTech from "from in or about March 2009 until *in or about July 2012*." *Id.* at ¶¶15, 30-32.

Further, different contracts are clearly at issue since the *Morgan* complaint alleges a different personnel requirement than in Relators' complaint.[10] As further evidence that the complaints concern different contracts, the *Morgan* complaint notes that the contract in effect prior to 2012 – contract M67854-07-D-5032 – was awarded to International Military Government LLC (which later became Navistar Defense LLC), and that ManTech served as a subcontractor on that contract. *Id.* at ¶¶30-32. By contrast, the SAC states, "Prior to 2012, the contract for maintenance and repair of MRAPs in Kuwait was held by Science Applications International Corp ("SAIC")[, who] . . . subcontracted the actual repair and maintenance services to a variety of subcontractors including Ranger Land Systems, Inc. [ ] and VSE Corporation [ ]," SAC ¶50, and that when

[9] The *Morgan* complaint also notes contract M67854-12-D-5508 "for the procurement of 112 field service representatives and instructors for the MRAP Cougar Family of Vehicles Program[, which] . . . includes work to be performed *in Afghanistan*," was awarded *by the Marine Corps* to ManTech in or around November 2012. MMD, Ex. B ¶34 (emphasis added).

[10] *Compare* MMD, Ex. B ¶¶37, 40 (asserting that the underlying contract "required ManTech to staff its MRAP repair facilities with mechanical and electronic technicians trained and certified through a program called MRAP University," and that "none of the ManTech technicians at FOB Frontenac [in Afghanistan] had participated in, much less successfully completed, MRAP University.") *with* SAC ¶119 (alleging that the contract at issue required ManTech "to certify that its mechanics were qualified to work on the MRAP vehicles *by either* submitting (1) a certification of training from MRAP-U, or (2) *a waiver to MRAP-U training* (the MRAP-U certification-training credentials requirement may be waived for those personnel that have had previous experience with MRAP Vehicle Systems)." (Emphasis added) (citing Solicitation W56HZV-11-R-0181, page 107 of 125)).

ManTech was awarded the Contract in 2012, it "absorbed the existing mechanics and technicians who had been employed by its predecessor SAIC and its subcontractors." *Id.* at ¶122.

ii. *Morgan Also Concerned a Different Public Entity (Marine Corps); Different Requirements (MRAP-U required with no waiver option); Different Countries (Iraq and Afghanistan); and Different Time Period (prior to June 2012)*

The *Morgan* complaint alleges that the contract M67854-07-D-5032 was awarded as a result of a solicitation issued by the *Marine Corps System Command, Quantico, Virginia ("Marine Corps")*, and that ManTech served as a subcontractor under the contract. MMD, Ex. B ¶¶29, 32. Unlike in *Morgan*, the allegations here concern *Contract No. W56HZV-12-C-0127* that was awarded to ManTech *by the U.S. Army Contracting Command, Warren, Michigan,* for logistics sustainment and support for the "MRAP Family of Vehicles," including *in Kuwait*.[11] SAC ¶5. As each Relator began working for ManTech in Kuwait in the fall of 2012, *id.* at ¶¶12-16, Relators' complaint also concerns a different time-period than in *Morgan*, where the relator ceased working for ManTech in or around June 2012. MMD, Ex. B ¶15.

Simply stated, the FCA claim in *Morgan* against ManTech for use of personnel who *did not graduate from MRAP University* in a contract *with the Marine Corps* for MRAP repairs *in Afghanistan and Iraq* is not "substantially similar" to Relators' FCA claim against ManTech based on its use of personnel who *either* did not attend MRAP University *or had a waiver for MRAP-U training* in a contract *with the Army* for MRAP repairs *in Kuwait* during a different time-period.

[11] The SAC states, "Prior to 2012, the contract for maintenance and repair of MRAPs in Kuwait was held by Science Applications International Corp ("SAIC")," *id.* at ¶50, and that "ManTech initially absorbed the existing mechanics and technicians who had been employed by its predecessor SAIC and its subcontractors." *Id.* at ¶122. This further clarifies that *Morgan* concerned a different contract, as that complaint notes that the contract in effect prior to 2012 – contract M67854-07-D-5032 – was awarded to International Military Government LLC (which later became Navistar Defense LLC). MMD, Ex. B. ¶¶30-31.

See Shea, 863 F.3d at 935 ("When the relator 'bridge[s] the gap by [his] own efforts and experience,' the public disclosure bar does not apply." (Alterations in original) (citation omitted)); *see also East Bay Mun. Util. Dist. v. Balfour Beatty Infrastructure, Inc.*, 2013 U.S. Dist. LEXIS 178504, at *27-28 (N.D. Cal. Dec. 19, 2013):

> Given that the various complaints in the cases cited [ ] were filed before October 2002, it is not apparent to the Court how those actions can constitute disclosure of alleged [ ] misconduct that had not yet occurred. In any event, those cases do not constitute public disclosures of the allegations at issue here [because] the present action alleges misconduct by a different defendant under different contracts with different public entities in connection with different projects than those cases.

iii. *The Generalized Allegations in Morgan do not bar the Specific Allegations in this Qui Tam Action*

Furthermore, the allegations in *Morgan* are general (for example, while mentioning multiple contracts in the "Background" section, its FCA claim was based on a singular contract as the complaint only used the singular for "contract" instead of the plural, and the complaint did not cite to any specific contract provisions). *See* MMD, Ex. B. Such generalized allegations of fraud do not bar a later *qui tam* suit that alleges specifics. *See*, *e.g.*, *United States ex rel. Mateski v. Raytheon Co.*, 816 F.3d 565, 577 (9th Cir. 2016) ("Allowing a public document describing 'problems'—or even some generalized fraud in a massive project or across a swath of an industry—to bar all FCA suits identifying specific instances of fraud in that project or industry would deprive the Government of information that could lead to recovery of misspent Government funds and prevention of further fraud."); *Leveski v. ITT Educ. Servs., Inc.*, 719 F.3d 818, 831 (7th Cir. 2013) ("[W]e have indicated on more than one occasion that viewing FCA claims 'at the highest level of generality . . . in order to wipe out *qui tam* suits that rest on genuinely new and material information is not sound.'" (Citation omitted)).

Because Relators' FCA claim with respect to the qualifications of ManTech's personnel is not substantially similar to the FCA claim in *Morgan*, the public disclosure bar does not apply.

b. There is no Need for This Court to Determine Whether Relators are Original Sources, but They Clearly Are

The Court need not conduct an "original source" analysis since Relators did not base their allegations of fraud with respect to the qualifications of ManTech's personnel on publicly available information. *Folliard*, 308 F. Supp. 3d at 70; *Shea*, 863 F.3d at 932. However, assuming *arguendo* that Relators' allegations are based on publicly disclosed information, the public disclosure bar would still not preclude Relators' FCA claim with respect to the qualifications of ManTech's personnel because Relators are original sources.

The FCA was amended on March 23, 2010, as part of the Patient Protection and Affordable Care Act. The pre-amendment version defined original source as "an individual who has direct and independent knowledge of the information on which the allegations are based." The post-amendment version defines original source as someone "who has knowledge that is independent of and materially adds to the publicly disclosed allegations or transactions." 31 U.S.C. § 3730(e)(4)(B). Congress further expanded the reach of the FCA by this modification – removing the "direct" knowledge requirement and replacing it with a less demanding one, namely, that the whistleblower's information must "materially add" to any publicly disclosed information. *See United States ex rel. Fryberger v. Kiewit Pac. Co.*, 41 F. Supp. 3d 796, 807 (N.D. Cal. 2014).

Relators are original sources even under the more restrictive pre-amendment "direct and independent" definition. "'Direct' signifies marked by absence of an intervening agency" and "'[i]ndependent knowledge' is knowledge that is not itself dependent on public disclosure." *Springfield Terminal*, 14 F.3d at 656. The "original source" provision requires the relator to possess direct and independent knowledge of the "information" underlying the allegation, rather

than direct and independent knowledge of the "transaction' itself." *Id.* at 656-57. Specifically, "in light of the aims of the statute, . . . 'direct and independent knowledge of information on which the allegations are based' refers to direct and independent knowledge of *any* essential element of the underlying fraud transaction." *Id.* at 656-57 (emphasis in the original). The SAC details how Relators have direct and independent knowledge of the lack of qualification of ManTech's later-hired workforce. SAC ¶¶48-71.

In addition, Relators' allegations with respect to ManTech's unqualified workforce materially add to whatever ManTech claims were disclosed in *Morgan*. The *Morgan* complaint concerned ManTech's use of personnel who *did not graduate from MRAP University* in a contract *with the Marine Corps* for MRAP repairs *in Afghanistan and Iraq*, and was filed by a relator who ceased working for ManTech in or around *July 2012*. MMD, Ex. B. ¶¶15, 29-30, 37, 40. Relators' claim concerns ManTech's use of personnel who *either* did not attend MRAP University *or have a waiver for MRAP-U training* in a contract *with the Army* for MRAP repairs *in Kuwait* starting in *fall 2012*. Moreover, the allegations of lack of employee qualification made by Sawyer, Hawkins, Locklear, and Hayes are part of Relators' claims that ManTech falsely stated the number of labor hours worked in order to disguise the inefficiency of its inadequately trained workforce – false statements that led also to false statements of data points entered into the Army's SAMS-E system. The *Morgan* complaint makes no mention of the systemic labor hour reporting fraud. Relators' claims regarding the lack of qualification of the labor force materially add to the narrative of ManTech's systemic fraudulent conduct towards the government by providing a direct causal connection between two different categories of false claims and by establishing ManTech's motive to underreport its direct labor hours. ManTech's lies about the qualifications of its workforce combined with its effort to hide this massive deficiency by underreporting actual labor hours adds

additional plausibility to Relators' claim that ManTech would not have been awarded any contract options had the truth been known. Realtors are original sources and the public disclosure bar does not apply.[12]

D. Relators Adequately Pleaded TVPRA Violations Both as an Independent Cause of Action and as a Predicate for an Implied FCA Violation

Section 1589 of the TVPA prohibits knowingly providing or obtaining labor of a person (1) by means of force, threats of force, physical restraint, or threats of physical restraint, (2) by means of serious harm or threats of serious harm, (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 victim to believe that serious harm would result if the victim did not perform such labor. *Lagayan v. Odeh*, 199 F. Supp. 3d 21, 227-28 (D. D.C., 2016) (citing 18 U.S.C. § 1589(a)(1)–(4)). "Serious harm" is defined to include "*any* harm, whether physical or nonphysical, including psychological harm, that is sufficiently serious, under all of the surrounding circumstances, to compel a reasonable person of the same background to continue performing labor or services in order to avoid incurring that harm." *Id*. (citing §1589(c)(2)) (emphasis added). As has been recognized by the U.S. District Court for the District of Columbia, "Congress enacted Section 1589 to address the increasingly subtle methods of traffickers who place their victims in modern-day slavery, such as where traffickers restrain their victims without physical violence or injury." (citations omitted, citing cases). *Lipenga v. Kambalame*, 219 F. Supp. 3d 517, 525-26 (D. Md. 2016) (plaintiff sufficiently pleaded a claim under § 1589(a)(3) where defendant confiscated plaintiff's passport and threatened deportation).

[12] *See* also *United States ex rel. Moore & Co., P.A. v. Majestic Blue Fisheries, LLC*, 812 F.3d 294, 307 (3d Cir. 2016); *United States ex rel. Harris v. Lockheed Martin Corp*., 905 F. Supp. 2d 1343, 1351 (N.D. Ga. 2012); *United States ex rel. Booker v. Pfizer, Inc*., 9 F. Supp. 3d 34, 44 and 47 (D. Mass. 2014); *In re Baycol Prods. Litig*., 870 F.3d 960, 962 (8th Cir. 2017).

Courts have found that "serious harm" includes "threats of *any* consequences . . . that are sufficient under all of the surrounding circumstances to compel or coerce a reasonable person in the same situation to provide or to continue providing labor or services." *Echon v. Sackett*, 2017 WL 4181417 (D. CO. September 20, 2017) at *14 (emphasis added) (quoting *Shukla v. Sharma*, No. 07-CV-2972, 2012 WL 481796, at *2 (E.D.N.Y. Feb. 14, 2012). Threatening employees "with immigration consequences in order to prevent them from leaving employment constitutes a 'threatened abuse of the legal process' under Section (a)(3) of the TVPRA." *Aragon v. Ku*, 277 F. Supp. 3d 1055, 1069-70 (D. Minn. 2017); *see also Ramos-Madrigal v. Mendiola Forestry Serv., LLC*, 799 F. Supp. 2d 958, 960 (W.D. Ark. 2011). "[M]ultiple jurisdictions have found that the threat of deportation may itself constitute a threat sufficient to satisfy the second and/or third element of [§ 1589] forced labor." *Echon*, *supra*. The threat of financial harm is also a threat of serious harm within the meaning of the TVPRA. *Paguirigan v. Prompt Nursing Emp't Agency LLC*, 286 F.Supp.3d 430, 438 (E.D. N.Y. 2017) ("[t]he threat of deportation alone may support a claim for forced labor" under § 1589). In *United States v. Dann*, 652 F.3d 1160, 1171 (9th Cir. 2011), the Ninth Circuit held that an employer's threat that a foreign worker would owe $8,000 if she quit constituted threat of "serious harm" under the TVPRA. In *Paguirigan*, the plaintiff alleged that "she was . . . threatened with the prospect of paying a $25,000 contract termination fee . . . ." 286 F. Supp. 3d at 438. The court there concluded that "allegations of such a severe financial burden are more than enough to rise to the level of harm necessary to state a TVPA claim." *Id*. (citations omitted).

1. Relators' TVPRA Claims are Pleaded with Particularity

In contrast to FCA allegations, TVPRA allegations need only meet the requirements of FED. R. CIV. P. 8. *See Sulaiman v. Laram*, 2017 U.S. Dist. LEXIS 54691, at *12 (S.D.N.Y. Apr.

4, 2017).[13] Nonetheless, Relators have pleaded ManTech's TVPRA violations with the heightened particularity required by Rule 9(b).

Relators incorporate by reference the recitation of particularly pleaded facts from Section (II)(A)(1)(b), *supra*. Relators have also detailed how, while working at the KMSF adjacent to Highway 40 to the south of Kuwait City (SAC ¶5) during the period of 2012-2013 (*id.* at ¶¶12-16) under the direct supervision of ManTech managers John Gaurnieri, Ret. Colonel John Danks, Scott Campbell, and Bud Delano (*id.* at ¶¶60-64, 66, 67, 72, 202), ManTech violated the TVPRA and, by being a TVPRA violator, was no longer qualified to receive payment from the government under the widely-publicized "zero-tolerance" policies of both the executive and legislative branches. The SAC relays how ManTech confiscated Relators' and other employees' passports (*id.* at ¶¶173, 175, 176, 181, 193, 209, 219), engaged in an elaborate and illegal scheme to misrepresent Relators and their coworkers as "tourists" (*id.* at ¶¶174-224), and forced Relators to participate in ManTech-orchestrated "visa runs" (or "turn and burns") wherein Relators were brought to the Kuwait International Airport by ManTech, flown out of the country and instructed to immediately board flights back into Kuwait to represent themselves as returning tourists (*id.* at ¶¶174-177, 184-195). Relators have detailed how they could not simply walk away from their employment. *Id.* at ¶¶159-162, 194, 245, 249, 260. As in *Dann* and *Paguirigan,* their contracts carried steep financial penalties for leaving Kuwait without ManTech's permission including

[13] ManTech repeatedly cites *Muchira v. Al-Rawaf,* 850 F.3d 605 (4th Cir. 2017). *See* MMD at 35-36, 38, 40-43. Accompanying its heavy reliance on *Muchira* are numerous fact-based arguments about Relators' state of mind and assertions regarding Relators' lack of qualification for TVPRA protection. However, *Muchira* involved a motion for summary judgment, not a motion to dismiss. *Muchira*, 850 F.3d at 608; *see also Lagayan*, *supra*, 199 F. Supp. 3d at 28-29 (rejecting defendant's reliance on *Muchira* at motion to dismiss stage, *inter alia*, because it involved a summary judgment motion). Relators are not required to prove their case at the motion to dismiss stage. *Munro v. LaHood*, 839 F. Supp. 2d 354, 360 (D. D.C. 2012); *see also Sulaiman*, 2017 U.S. Dist. LEXIS 54691, at *12.

reimbursement of as much as $15,000 in training costs, reimbursement of costs for securing visas, and reimbursement of other costs related to work sponsorship, such as travel, lodging, *per diem*, medical exams, background checks, employment/deployment costs. *Id.* at ¶¶ 159-162. Such serious repercussions, viewed in totality, compelled Relators to continue working in order to avoid the financial harm.

In a further abuse of law, ManTech put its employees to work without obtaining resident visas for them as required under the Kuwait Private Sector Labor Law ("KPSLL"). SAC ¶¶163-168, 170. Had Relators and their coworkers been properly processed and given resident visas and work permits under the KPSLL, they would have had the protection of Kuwaiti law including fair pay, protection from summary dismissal, paid vacation, limits on the number of hours worked, and rights to safety in the workplace. *Id.* at ¶¶170-74, 250-52. Without passports, proper visas, or work permits, and by insisting that Relators and their fellow employees engage in "visa runs," ManTech placed each of them in danger of arrest, incarceration, criminal prosecution, summary deportation, and a life-time ban on entering any Gulf Cooperation Council country. *Id.* at ¶¶10, 11, 155, 174-76, 184-86, 193, 201, 202, 204, 212, 213, 217, 224, 225. Having made criminals of Relators and the rest of its workforce, ManTech then harmed them further by stripping them of the physical protections that would have been required had this workforce had the benefit of Kuwaiti or even U.S. law. *Id.* at ¶¶228-237. ManTech denied Relators and their workmates the personal protective equipment – Tyvek suits, respirators, gloves, and other materials – needed to shield them from the toxins being release from the grinding and burning of isocyanate-filled CARC paint. *Id.* at ¶¶244, 245, 247. Relators describe in detail how they were forced to work on MRAPs without protection from CARC exposure, and how CARC inhalation can be deleterious to health. *Id.* at ¶¶227-48. ManTech (not the government) was required, but failed, to provide safety

equipment, breathing apparatuses, and otherwise maintain safe working conditions in order to protect against CARC inhalation. *Id.* at ¶¶234-45. Because Relators were coerced to continue to work for ManTech, they were likewise forced to work under these health-hazardous conditions. Relators' allegations of wage theft (*id.* at ¶¶ 250-60) constitutes financial harm and is also actionable under Section 1589(a)(2).

a. Contrary to the MMD, Relators Adequately Pleaded a TVPRA Claim for Forced Labor Under Section 1589(a)(3)

That the threats of deportation were not explicit from ManTech is a red-herring. The SAC alleges that ManTech created the hostile work conditions and circumstances that gave rise to constant fear of arrest, deportation, and (coerced) continued labor. SAC ¶¶156, 159-225. Notably, ManTech cites no authority to support its contrived requirement of personal threats. *See* MMD at 35. To the contrary, its own authority confirms that explicit threats are not required. *See Lagayan,* 199 F. Supp. 3d at 27 (rejecting defendants' argument that plaintiff could not state a TVPRA claim in the absence of an explicit threat).

ManTech vacillates between diminishing Relators' forced labor allegations and attempting to scold them for not escaping from its clutches when Relators had the chance. ManTech states, "relators were given back their passports and did have the ability to escape[.]" MMD 38, n. 30. This blame-the-victim defense should be rejected by the Court. There was no "escape" from the lifelong consequences of leaving Kuwait without ManTech's permission. Relators would have each been saddled with more than $15,000 in debt to ManTech, in addition to the repercussions of not reporting back to work and being fired for cause (and being denied unemployment benefits), (SAC ¶¶156, 159, 160, 194, 245, 249, 260). In addition, Relators and their colleagues would have been reported as absconders to Kuwaiti government officials (*id.* ¶¶166, 167, 225, 249). "Absconding from the workplace" is a criminal offense in Kuwait making relators and any of their

colleagues who chose to "escape" ineligible for any future employment in Kuwait or any other country that is part of the Gulf cooperation Council. (*id.* ¶¶166- 168, 225, 249). The "escape" that ManTech's lawyers now, with the benefit of hindsight, recommend to Relators Sawyer, Hayes, Hawkins, Locklear, and Nelson, would have come at the expense of lifetime interference with their ability to contract with companies in that region of the world.

b. Contrary to the MMD, Relators Adequately Pleaded the Element of Serious Harm Under Section 1589(a)(2)

ManTech argues that Relators "voluntarily accepted employment with ManTech . . . in exchange for generous hourly wages and other pay," and that they were not "forced" to work for ManTech "against their will." MMD at 39, 41. But courts have rejected similar arguments where, as here, hostile conditions and serious financial repercussions are alleged. *See, e.g., Paguirigan*, 286 F. Supp. 3d at 439 ("Defendants' argument that plaintiffs claim of forced labor is 'absurd' because plaintiff could 'freely [leave]' her employment . . . is similarly unavailing."). Of course, a claim for forced labor under TVPRA "does not require that plaintiffs be kept under literal lock and key." *Franco v. Diaz*, 51 F. Supp. 3d 235, 247 (E.D.N.Y. 2014); *Paguirigan*, 286 F. Supp. 3d at 439 (same; "That plaintiff was physically able to leave her employment . . . is not determinative in light of the termination fee . . . ."); *Guobadia v. Irowa*, 103 F. Supp. 3d 325, 335 (E.D.N.Y. 2015) ("that the Plaintiff may have been able to come and go as she pleased from the home does not mean the Defendants' [sic] were not engaging her in unlawful forced labor."). "Rather, the fundamental purpose of § 1589 is to reach cases of servitude achieved through *nonviolent coercion* . . . ." *Paguirigan*, 286 F. Supp. at 439 (emphasis added). Relators adequately alleged they were harmed or damaged by ManTech's TVPRA violations.

c. The TVPRA Claims Are Not Preempted by the Defense Base Act

ManTech argues that Relators' TVPRA claims are "preempted" under the Defense Base Act, 42 U.S.C. § 1651 et seq. ("DBA"). But federal statutes do not preempt other federal statutes. *See, e.g., Baker v. IBP, Inc.*, 357 F.3d 685, 688 (7th Cir. 2004) ("Federal statutes do not 'preempt' other federal statutes . . . though one may repeal another implicitly if they are irreconcilable . . . ."); *Danielsen v. Burnside-Ott Aviation Training Center, Inc.*, 941 F.2d 1220, 1226-27 (D.C. Cir. 1991) ("We have a slight semantic difficulty with the use of the word 'preemption' for the concepts we discuss . . . . [O]ur task is more accurately described as determining whether there is a statutory provision of an exclusive remedy rather than the preemption of an entire field."); *United States v. General Dynamics Corp.*, 19 F.3d 770, 773 (2d Cir. 1994) ("well established jurisprudence . . . strongly disfavors preemption of federal statutory law by another federal statute absent express manifestations of preemptive intent"). ManTech's field preemption argument thus falls flat. The actual inquiry is whether the exclusive remedy provision under the DBA bars Relators' TVPRA claims. It does not.[14]

The DBA applies to claims for the "injury or death of any employee." 42 U.S.C. § 1651(a). Among other things, it establishes a workers' compensation scheme for civilian government employees and contract workers who are actually injured on overseas military bases. *Sickle*, 884 F.3d at 341. The DBA does not define "injury." 42 U.S.C. § 1651 *et. seq*. The DBA incorporates parts of the Longshore Act, and Courts thus look to that statute for a definition of injury. *Martin v. Halliburton*, 808 F. Supp. 2d 983, 989 (S.D. Tex. 2011). Under the Longshore Act,

[14] ManTech also argues that any preemption would deprive the Court of subject matter jurisdiction. That, too, is wrong. Preemption is not jurisdictional, but instead forecloses a plaintiff from stating a legally cognizable claim for recovery—it speaks to the legal viability of a claim, not the power of the court to act. *Sickle v. Torres Advanced Enter. Sols., LLC*, 884 F.3d 338, 345 (D.C. Cir. 2018) (citation omitted).

> The term "injury" means *accidental injury or death* arising out of and in the course of employment, and such occupational disease or infection as arises naturally out of such employment or as naturally or unavoidably results from such *accidental* injury . . . .

Id. (emphasis added) (quoting 33 U.S.C. § 902(2)). The liability of a contractor under the Act "shall be exclusive" of all other liability "*coming within the purview* of [the DBA]." 42 U.S.C. § 1651(c) (emphasis added); *Sickle*, 884 F.3d at 342.

The SAC alleges that Relators were exposed to inhumane and health-hazardous work conditions (*e.g. SAC* ¶¶240-245). These allegations provide additional details of the harmful conditions of their TVPRA claims. None of these allegations has been brought on the assumption that ManTech's conduct was "accidental." Instead, they are brought on the basis of the allegation that the harm inflicted upon Relators was intentional.

The cases ManTech cites in support of its "preemption" theory relate to a personal injury or death claims, or some other claim for which DBA actually affords a remedy. *See Brink v. Cont'l Ins. Co.*, 787 F.3d 1120, 1129 (D.C. Cir. 2015) (DBA barred injured employees' tort claims); *Sickle*, 884 F.3d at 341 (DBA exclusive remedy provision barred one plaintiff's personal injury claim sounding in tort); *Morrison-Knudsen Constr. Co. v Dir., Office of Workers' Comp. Programs*, 461 U.S. 624, 636 (1983) (employee of a construction company was fatally injured). And in *Brink*—the one case ManTech cites involving a non-tort claim—the D.C. Circuit confirmed that the plaintiffs' RICO claims for fraud and delayed payments were barred by the DBA exclusivity provision because the Act "already provides a remedy for . . . [the] false statements" and other conduct that allegedly violated of RICO. *Brink*, *supra*, 787 F.3d at 1127.

ManTech wavers between two arguments. At first, it states that the DBA "preempts" the TVPRA claims only insofar as Relators' alleged harm related to poor work conditions and CARC exposure at the KMSF. MMD at 42. But later, it makes a more encompassing argument that the

"gravamen" of Relators' TVPRA claim is the harm suffered due to poor work conditions and CARC exposure, and, thus, that the DBA preempts the entire TVPRA claim. *Id.* at 44-45. The "gravamen" test derives from a case that did not even relate to the DBA. *See Fry v. Napoleon Cmty. Sch.*, _U.S._; 137 S. Ct. 743, 755 (2017) (discussing a claim in the context of the Individuals with Disabilities Education Act ("IDEA")). *Fry*—which assess the IDEA—is thus not instructive. ManTech's request that the Court evaluate Relators' TVPRA claim under the requirements of some other statute (*i.e.*, some inapposite "gravamen" test) should be refused.

The core harm claimed by Relators here—forced labor and trafficking—is not afforded a remedy under the DBA because it does not "come within the purview" of the Act. *Cf. Brink*, 787 F.3d at 1127. Accordingly, the DBA's exclusivity provision does not bar Relators' claims. Moreover, the tissue damage inflicted from chronic exposure to potentially, and ultimately deadly isocyanate-filled CARC fumes might not manifest for years. In the meantime, Relators' entitlement to a DBA remedy has not vested. *See, e.g., Barry Farm Tenants v. D.C. Hous. Auth. v. D.C. Hous. Auth.*, 311 F. Supp. 3d 57, 68-69 (D. D.C. 2018) (concluding that "plaintiffs have not presented an issue that is currently fit for judicial review" because they had not suffered injury from a discriminatory housing redevelopment plan that was not yet implemented); *Young v. Spaulding*, No. 92-35268, 1993 U.S. App. LEXIS 1011, at *2 (9th Cir. Jan. 14, 1993) (district court did not err in concluding that "Defendants' actions . . . have not yet injured Plaintiff, and as a consequence, Plaintiff's complaint is not yet ripe.").

2. Relators Adequately Alleged Both Falsity of ManTech's TVPRA Certification and an Implied FCA Violation Based on ManTech's TVPRA-Violative Conduct

a. Where ManTech is Obligated, by Law, to Certify TVPRA Compliance, Relators' Particularized Allegations of TVPRA Violations Establish that ManTech's TVPRA Compliance Certifications Were False

As previously articulated, an implied false certification occurs when a claimant "makes representations in submitting a claim but omits its violations of statutory, regulatory, or contractual requirements." *Escobar*, 136 S. Ct. at 1999. In such cases, those omissions can be a basis for liability "'where certification was a prerequisite to the government action sought.'" *Kellogg Brown*, 800 F. Supp. 2d at 154; *see also DynCorp*, 253 F. Supp. 3d at 100 (a relator "can show falsity by demonstrating that (1) a contractor withheld information about its noncompliance with contractual or regulatory requirements; and (2) those contractual or regulatory requirements were material.").

ManTech claims that "relators have failed to plead that any purported certification based on compliance with the TVPRA was false." True, Relators are not privy to the certification statements made by ManTech to the government. However, (1) Relators know that certification is required under the contract and under the law; (2) Relators know that the government is prohibited from making payments to a contractor that violates the TVPRA; (3) Relators have plausibly pleaded systemic violations of the TVPRA (*see* Section II(E)(1), *supra)*; and (4) under Rule 12, Relators are entitled to the reasonable inference that ManTech's FCA certifications were false.

b. Even Absent Explicit TVPRA Certification, "Zero-Tolerance" Policies for TVPRA Violators Made ManTech Ineligible for Payment and Liable Under the FCA

In *Escobar*, the Supreme Court unanimously declared the Court's holding at the very beginning of the written opinion:

> We first hold that, at least in certain circumstances, the implied false certification theory can be a basis for liability [under the FCA]. Specifically, liability can attach when the defendant submits a claim for payment that makes specific representations about the goods or services provided, *but knowingly fails to disclose the defendant's noncompliance with a statutory, regulatory, or contractual requirement*. In these circumstances, liability may attach if the omission renders those representations misleading.
>
> We further hold that False Claims Act liability for failing to disclose violations of legal requirements does not turn upon whether those requirements were expressly designated as conditions of payment. *Defendants can be liable for violating requirements even if they were not expressly designated as conditions of payment*.

136 S. Ct. 1995-96 (emphasis added).

In *Escobar*, the Supreme Court considered the Medicaid reimbursement claims made by a counseling center in Lawrence, Massachusetts. 136 S. Ct. at 1997. Those providing counseling services were not properly licensed to do so yet they billed Medicaid using codes reserved for properly licensed mental health service providers. *Id*. Specifically:

> When submitting reimbursement claims, [Defendant] used payment codes corresponding to different services that its staff provided such as "Individual Therapy" and "family therapy." Staff members also misrepresented their qualifications and licensing status to the Federal Government to obtain individual National Provider Identification numbers, which are submitted in connection with Medicaid reimbursement claims and correspond to specific job titles. For instance, one [Defendant] staff member . . . registered for a number associated with "Social Worker, Clinical," despite lacking the credentials and licensing required for social workers engaged in mental health counseling.

Id. (internal citations omitted).

The Court held that "[b]y using payment and other codes . . . .without disclosing [Defendant's] many violations of basic staff and licensing requirements for mental health facilities, [Defendant's] claims constituted misrepresentations." *Escobar*, 136 S. Ct. at 2000-01. The D.C. Circuit, following *Escobar*, explained that "implied false certification claims for the underlying claim for payment at issue need not include 'express contractual language specifically linking compliance to eligibility for payment.'" *Folliard*, 308 F. Supp. 3d at 79 (citation omitted). Instead,

a complaint need only show "that the contractor withheld information about its noncompliance with material contractual requirements[.]" *Id.*

3. Relators Adequately Alleged the Materiality of TVPRA Compliance

ManTech argues that Relators do not plausibly allege that TVPRA compliance is material. MMD at 23. It posits that materiality boils down to non-compliance in a way that undermines the "very essence of the bargain." *Id*. at 24. But that is only one consideration for materiality. *See United States ex rel. Folliard v. Comstor Corp.*, No. 11-731, 2018 U.S. Dist. LEXIS 187828, at *16 (D. D.C. Nov. 2, 2018) (citation omitted) (essence of the bargain factor is relevant not dispositive—to materiality). Many factors "might exhibit materiality and *no 'single fact or occurrence'* is 'always determinative' of materiality." *Id*. at *15 (emphasis added) (quoting *Escobar*, 136 S. Ct. at 2001). Instead, "courts are to conduct a holistic approach to determining materiality in connection with a payment decision . . . ." *Id.* at *16 (internal quotation marks and citation omitted).

Violations of certain statutes are, at times, deemed "inherently" material under the FCA. *See*, *e.g.*, *Reidel*, 332 F. Supp. 3d at 66 ("violations of [the Anti-Kickback Statute] and Stark [Law] can be pursued under the [False Claims Act], since they would influence the Government's decision of whether to reimburse Medicare claims.").[15] In this case, Relators have claimed that the TVPRA violations, like violations of the Anti-Kickback statute, are inherently material to the government:

[15] *See also United States ex rel. Pogue v. Diabetes Treatment Ctrs. of Am., Inc.*, 565 F. Supp. 2d 153, 159 (D. D.C. 2008); *United States ex rel. Capshaw v. White*, 2018 U.S. Dist. LEXIS 197495, at *11 (N.D. Tex. Nov. 20, 2018) (holding violation of the Anti-Kickback Statute is "inherently" material under the FCA); *United States ex rel. Wood v. Allergan*, 246 F. Supp. 3d 772, 818 (S.D.N.Y. 2017) (same); *United States v. Berkley Heartlab, Inc.*, 2017 WL 6015574, at *2 (D.S.C. 2017) (same).

> Irrespective of whether any particular Army contracting officer might think about the materiality of TVPRA adherence, the policy pronouncement of a 'zero tolerance' for activities that violate the TVPRA *makes such violations material as a matter of law*.

SAC ¶ 282 (emphasis added).

By way of example, in a two-year budgetary appropriation for *the entire military of the United States*, Congress made it unequivocally clear: "None of the funds made available [under the Department of Defense Appropriations Act] may be used in contravention" of TVPRA and the Trafficking Victims Protection Act of 2000. (Emphasis added).[16] This categorical prohibition suggests that that the TVPRA is a statute for which noncompliance is automatically material. Relators' allegations of the Government's focus on anti-trafficking laws (SAC ¶¶ 265-70)—*e.g.*, the DoD OIG's audit of over 360 DoD contracts for compliance with anti-trafficking laws, and the Inspector General's 2011 recommendation that a FAR and CentCom anti-trafficking clause be included in all contracts—coupled with its "zero tolerance" pronouncement (*id.* at ¶ 272), make it plausible that compliance with TVPRA is inherently material to payment.

This case alleges violations of the FCA predicated on non-compliance with Congress's and the President's relatively recent determination to employ the full resources of the federal government to give teeth to the TVPRA. Given that the Executive and legislative branches have spoken definitively on compliance with anti-trafficking laws in the performance of government

[16] Department of Defense Appropriations Act of 2014, H.R. 2397, 113th Cong. § 8112 (2013-2014); *see also* National Defense Authorization Act for Fiscal Year 2013, Pub. L. No. 112-239, §§ 1703, 1704, 126 Stat. 2094-96 (requirements for certification of compliance with anti-trafficking laws by recipients of government contracts and monitoring for compliance); Exec. Order No. 13,627, available at https://obamawhitehouse.archives.gov/the-press-office/2012/09/25/executive-order-strengthening-protections-against-trafficking-persons-fe (last visited Feb. 11, 2019) ("The United States has long had a zero-tolerance policy regarding Government employees and contractor personnel engaging in any form of this criminal behavior."); 48 C.F.R. § 52.222-50 (recognizing government's prohibition of trafficking in persons in government contracts).

contracts, any evidence that might exist of a contracting officer continuing to authorize payment to ManTech in the face of trafficking violations would not suggest immateriality -- it would suggest illegality. "[A] government employee cannot authorize a contractor to violate federal law any more than a government employee can ratify a violation of the FCA after the fact." *United States ex rel. Roby v. Boeing Co.*, 100 F. Supp. 2d 619, 644 (S.D. Ohio, 2000). This is because "[p]rotection of the public fisc requires that those who seek public funds act with scrupulous regard for the requirements of the law . . . those who deal with the Government are expected to know the law and may not rely on the conduct of Government agents contrary to law." *Id.*; *see also Heckler v. Community Health Services of Crawford County, Inc*, 467 U.S. 51, 63 (1984); *United States ex rel. Mayman v. Martin Marietta Corp.*, 894 F. Supp. 218, 223 (D. Md. 1995).

The complaint plausibly pleads that TVPRA compliance was material to payment. ManTech's argument is at odds with the Government's clear pronouncements to the contrary and the allegations in the SAC, which, together, give rise to "more than a mere possibility that the government would be entitled to refuse payment" due to ManTech's non-compliance with the TVPRA. ManTech's MMD the TVPRA-based FCA claim should be denied.

4. Relators Adequately Alleged that ManTech Acted with the Requisite Scienter

ManTech is estopped from claiming ignorance of the TVPRA requirements of its contract. First, the prohibitions against forced labor are incorporated in ManTech's contract. SAC ¶271-72. The Solicitation itself notified ManTech of the Government's "zero tolerance policy regarding trafficking in persons." *Id.* at ¶272. Moreover, Relators establish that the government viewed compliance with anti-trafficking laws to be so important that provisions from the FAR prohibiting human trafficking, inhumane conditions, and passport confiscation were added into the Contract (in Section C-3), *id.* at ¶278, and customized addendums to each of ManTech's employment

contracts with Relators included language calling for compliance with these requirements. *Id.* at ¶¶279-80. The Contract refers to a variety of regulations (to which ManTech agreed) requiring adherence to international and host-country trafficking laws. *Id.* at ¶275.[17] The Contract makes clear that the Army would pursue a "more stringent policy than federal requirements regarding trafficking in persons," and requires that the contractor disclose "any information . . . [alleging conduct] that violates [Trafficking in Persons] policies . . . ." *Id.* at ¶277. Thus, the Government has also made clear, through the Executive branch regulations, Congressional legislation and the contract provisions, that TVPRA compliance is a *sine qua non* of contracting with the government.

The SAC also provides detailed accounts about how ManTech managers were put on actual notice of abuses of law which are predicates to trafficking violations. Relator Hayes confronted ManTech manager Delano on the issue of illegal visa runs. SAC ¶¶201-204. Hayes made clear that being in Kuwait on an expired tourist visa was illegal and subjected him to arrest. *Id.* at ¶203. Having been informed of the illegality of their procedures, Hayes's managers warned him not to venture out of his apartment. *Id*. Allegations relayed through Clinton Sawyer provide additional, particularized, factual assertions. Relator Sawyer explicitly informed ManTech's KMSF managers that 1) he should not be without his passport and 2) he needed a Visa 18 in order to work legally in that country. *Id.* at ¶¶210-215.

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[17] The Contract includes numerous notices regarding anti-trafficking laws compliance obligations. *See*, *e.g.,* ¶271.; *see also* ¶273 (FAR gave notice of prohibitions on engaging in trafficking and forced labor). The centrality of anti-trafficking law compliance in the Contract cannot be understated or disputed.

III. CONCLUSION

Relator/Plaintiffs' complaint meets all the requirements for pleading valid FCA and TVPRA causes of action. ManTech's motion to dismiss should be denied.

Respectfully submitted,

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