UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Greenbelt Division

UNITED STATES OF AMERICA *ex rel.* ELGASIM MOHAMED FADLALLA, *et al.,* Plaintiffs, v. DYNCORP INTERNATIONAL LLC, *et al.*, Defendants.	Case No. 8:15-cv-01806-PX

MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANT GLOBAL LINGUIST SOLUTIONS, LLC'S MOTION TO DISMISS

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Defendant Global Linguist Solutions, LLC ("GLS")[1] respectfully submits this Memorandum in Support of its Motion to Dismiss Relators' First Amended Complaint ("FAC") under Federal Rules of Civil Procedure 8, 9(b), 12(b)(1), and 12(b)(6) for failing to plead, with particularity, a claim on which relief can be granted and for lack of subject matter jurisdiction.

INTRODUCTION

Relators already sought to recover on the same facts alleged here in an earlier employment and breach of contract action. They were not successful. In this Complaint, Relators repackage those claims as False Claims Act allegations, 31 U.S.C. § 3729 *et seq*. ("FCA"), in a failed attempt to enlist the government's help. This may be why, even after two years to investigate, the Complaint utterly fails to satisfy the pleading standards demanded in FCA cases by Federal Rules of Civil Procedure 8 and 9(b).

While employment and contract claims are not subject to a heightened pleading standard, FCA claims are. To state an FCA claim, Relators must plead with particularity the "who, what, when, where, and how" of the allegedly false or fraudulent statements. Rule 9(b) requires that Relators allege specific facts establishing the relevant legal or contractual requirements, describing the fraudulent conduct and statements, and identifying specific false claims for payment. Relators must also show that defendants acted with the requisite scienter. Relators fail to do so, and their claims should be dismissed as a result.

Relators' claims fail out of the gate because they do not plead with particularity the specific legal or contractual requirements that they claim control. That is to say nothing of the fact that

[1] Relators separately list "Global Linguist Solutions" as a defendant, alleging that it is an unincorporated venture. Relators offer no support for this claim, appear to consider this entity the same as GLS, and purposefully conflate the two for the rest of their Complaint. GLS is a limited liability company and does not operate any separate entity named "Global Linguist Solutions."

Relators fail to allege facts that suggest *any* particular false claim was submitted. In fact, the Complaint implicitly acknowledges that Relators cannot meet the required pleading standards. In place of specificity, Relators repeatedly plead "upon information and belief" as to essential elements of their FCA theories—including the violations, materiality, and GLS' knowledge—without detailing the basis for those beliefs. *See, e.g.*, FAC ¶¶ 117, 526-28 (pleading "upon information and belief" as to GLS' representations to the government), ¶ 119 (claims submission), ¶ 132 (interpretation of laws), ¶¶ 185-86, 491 (actual performance under the contract).

This stands to reason. Relators were not parties to the contracts referenced in the Complaint. They were not involved in the negotiations giving rise to the contracts. They have little or no direct knowledge of contract implementation. They have no direct knowledge from which to plausibly plead GLS' intent. And, fatally, they have no knowledge of any claims for payment.

Lacking essential knowledge, Relators try to save their Complaint by repeatedly pointing to two erroneous sources: (1) Relators' interpretation of general small business policies and (2) their labor and employment dispute. Neither gives rise to an *FCA claim*. A "policy" is not a substitute for showing a knowing failure to abide by the terms of a contract and seeking payment despite knowing of that failure. A "policy" is no substitute for showing that the provisions of a contract were material. And the fact that the government knew of the alleged lapses and continued to pay indicates that it did not consider the failure to adhere to such "policy" to be material.

Relators' employment dispute is just that. That these employment claims are framed around the Trafficking Victims Protection Reauthorization Act, 18 U.S.C. § 1581 *et seq*. and 22 U.S.C. § 7101 *et seq*. ("TVPRA"), changes nothing. The allegations do not state a claim under the TVPRA. The same is true of the False Claims Act.

Finally, even if the FCA claims were well pled, the public disclosure bar requires their

dismissal. Relators' small business subcontracting claims repeat the same issues that were the subject of a 2009 Congressional hearing. Relators' labor and employment claims repeat the same allegations that they made in the news media in 2013 and in their 2013 class action alleging employment and breach of contract claims. Furthermore, here the public record makes it apparent that the government was aware of these issues and still chose to make payments under the contracts. Relators cannot now recover for conduct the government was aware of, investigated, and found immaterial. This fourth attempt to exact payment from GLS should be dismissed.

BACKGROUND

Relevant Parties. **GLS** provides linguistic services and support, including interpreters (*i.e.*, spoken work) and translators (*i.e.*, written). GLS is based in Herndon, Virginia, and has approximately 349 full-time employees. The United States, specifically the U.S. military, is one of its more significant customers. GLS regularly partners with a wide range of entities to efficiently provide services in accordance with customer requirements. These partners include subcontractors and independently contracted linguists with whom GLS worked on certain contracts. Defendants **Shee Atika Languages**, **Invizion**, **Tigerswan**, **Thomas Wright**, and **KMS Solutions** (per the FAC, the "Small Business Defendants") were GLS subcontractors. **Relators** are twenty-nine[2] interpreters and/or translators who worked for various defendants in Kuwait, and elsewhere.

The Contracts. Relators' claims are based on two contracts between the United States and GLS. Both required GLS to manage and administer linguistic services to support active-duty military forces and entities outside the United States. Under both, GLS recruited, supervised, evaluated, and managed civilian language specialists deployed to various military bases and

[2] Names of the twenty-nine Relators/Plaintiffs (the linguists bringing this suit are "Plaintiffs" for purposes of their TVPRA claims) are set forth in the case caption. As Relators do not clearly distinguish who has pled (or could plead) which allegations, this motion addresses them as a group.

theatres. The first such contract, for Translation and Interpretation Management Services ("TIMS Contract" or "Contract 1"), was proposed and awarded in 2007 and signed on December 6, 2007. Under Contract 1, GLS subcontracted with small businesses. The second such contract, the Defense Language Interpretation Translation Enterprise contract ("DLITE Contract" or "Contract 2"), was signed on July 1, 2011. As both contracts provided for support to U.S. military personnel in Iraq, linguists were based in Iraq and in nearby locations, including Kuwait. This included accommodations on military installations in housing provided by the U.S. government. In Kuwait, this included Camp Buehring and Camp Arifjan.

Prior Disputes. These contracts were the subject of prior public scrutiny. The TIMS Contract was the subject of a Congressional inquiry by the Commission on Wartime Contracting in Iraq and Afghanistan, including an August 12, 2009 hearing ("CWC Hearing"). The hearing discussed GLS' subcontracting plan, its Integrated Team Management Approach ("ITMA"), and other aspects of its subcontractor management, in detail. The DLITE Contract was the subject of a putative 2013 class action lawsuit in the Eastern District of Virginia brought by eighteen of the Relators. The plaintiffs alleged violations of the Fair Labor Standards Act and Kuwaiti labor law, breach of contract, and tortious interference, among others. Complaint, *Zinnekah, et al. v. Global Linguist Solutions, LLC, et al.*, 1:13-cv-01185-AJT-JFA, Dkt. 1 (E.D. Va. Sept. 20, 2013).[3] After GLS and other defendants moved to dismiss, plaintiffs filed an amended complaint. *Id.*, Dkt. 35 (Nov. 12, 2013). Plaintiffs then voluntarily dismissed all claims. *Id.*, Dkt. 61 (Dec. 2, 2013).

Relators' Allegations. Relators filed this action roughly two years after dismissing their labor and employment claims. Relators' current amended Complaint, now before this Court, lumps

[3] The Court may take judicial notice of public filings without converting this into a motion for summary judgment. *James v. Acre Mortg. & Fin., Inc.*, 306 F. Supp. 3d 791, 797 (D. Md. 2018).

together various issues without specific bases for liability. Formally three FCA "counts," each is pled as an overlapping and repetitive combination of theories and factual allegations. This shotgun pleading obscures Relators' failure to satisfy Rules 8, 9(b), 12(b)(1), and 12(b)(6). To the extent decipherable, Relators allude to five separate FCA theories in an attempt to cover the range of bases for FCA liability in the hope something sticks. Nothing does. Each theory is deficiently pled.

This Motion unpacks Relators' conflated theories. Count One is essentially a fraud in the inducement theory, alleging GLS falsely represented its small business subcontracting approach (FAC ¶ 490) and its intent to implement its own subcontracting plan (FAC ¶ 526) when it sought Contract 1 (in 2007). To the extent there was a fraudulent inducement of Contract 2 (in 2013), as pled this depends on showing fraud as to Contract 1. Count Two appears to cover three FCA theories (again, through overlapping statements): (a) express false certifications, (b) implied false certifications, and (c) actual false submissions. Relators try to support these theories by alleging that GLS' subcontracting practices did not satisfy certain small business policies (FAC ¶ 118) and that GLS' labor-related practices were allegedly not in compliance with law or contract (FAC ¶¶ 503-04), yet GLS still actually or implicitly certified compliance. As Relators do not describe the submission of a single actual claim for payment, it is unclear which theory applies to which claims. Relators offer only the blanket assertion that every invoice under both Contract 1 (2007-12, FAC ¶ 2) and Contract 2 (2013 forward) was a "separate false claim." FAC ¶¶ 522-23. Count Three alleges a reverse false claim, namely that GLS made false records or statements "to avoid paying back" (¶ 544) unspecified amounts owed the government—again, apparently under both contracts. Finally, Count Four alleges the same labor-related practices also violated the TVPRA. FAC ¶¶ 548-49. Laid bare, each of Relators' counts fails to state a claim and should be dismissed.

STANDARD OF REVIEW

A court should dismiss a complaint that fails to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). A complaint must allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). More than "the mere possibility of misconduct," the facts must show the defendant is liable "for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009). A court should only accept "well-pled facts." *Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc.*, 591 F.3d 250, 253 (4th Cir. 2009). Conclusory assertions are "not entitled to the assumption of truth." *Ashcroft*, 556 U.S. at 679.

Because FCA claims sound in fraud, Rule 9(b) requires that Relators plead the "circumstances constituting fraud" with "particularity." Relators must plead with particularity the "time, place, and contents of the false representations, as well as the identity of the person making the misrepresentation and what he obtained." *Harrison v. Westinghouse Savannah River Co.*, 176 F.3d 776, 784 (4th Cir. 1999) (internal citation omitted). In other words, they must plead the "who, what, when, where, and how" of the alleged fraud. *United States ex rel. Wilson v. Kellogg Brown & Root, Inc.*, 525 F.3d 370, 379 (4th Cir. 2008). Relators must also plead a claim submitted with particularity. *Harrison*, 176 F.3d at 785. This is "the *sine qua non* of a False Claims Act violation." *United States v. Kernan Hosp.*, 880 F. Supp. 2d 676, 686 (D. Md. 2012) (internal citation omitted). Relators "'must come to court with a claim in hand,' and cannot rely on 'generalized, speculative suppositions about how a claim might have been submitted.'" *United States ex rel. Brooks v. Lockheed Martin Corp.*, 423 F. Supp. 2d 522, 526 (D. Md. 2006) (internal citation omitted).

ARGUMENT

A well-pled FCA complaint must demonstrate that "(1) there was a false statement or fraudulent course of conduct; (2) made or carried out with the requisite scienter; (3) that was

material; and (4) that caused the government to pay out money or to forfeit moneys due (*i.e.*, that involved a 'claim')." *Wilson*, 525 F.3d at 376 (quoting *Harrison*, 176 F.3d at 788). Each of Relators' FCA theories fails to satisfy even the first prong and falls well short of pleading an FCA claim with the requisite particularity. Accordingly, Relators' FCA claims should be dismissed. Relators were not GLS employees (and certainly not insiders) and know essentially nothing about the negotiation, formation, or execution of the contracts on which their claims are based. They plead no knowledge of claims for payment under the contracts. They plead no facts showing GLS' intent. In short, Relators do not—and cannot—allege facts *essential* to their FCA claims. Instead, Relators repeat two broad sets of allegations: (1) GLS did not satisfy Relators' interpretation of generic small business policies, and (2) GLS violated the FCA on account of Relators' labor and employment disputes. As pled, neither supports an FCA claim. Plaintiffs also allege the same labor and employment issues constitute a violation of the TVPRA. This claim also fails.

GLS joins in and incorporates by reference the arguments of Defendants AECOM National Security Programs, Inc. and DynCorp International LLC, as set forth in their memoranda of law in support of their motions to dismiss filed February 15, 2019, to the extent applicable to GLS.

I. RELATORS' FRAUDULENT INDUCEMENT CLAIMS FAIL BECAUSE THEY HAVE NOT PLED A SPECIFIC STATEMENT AT ISSUE, HOW IT WAS FALSE, THAT IT WAS MADE WITH SCIENTER, OR THAT GLS FAILED TO PERFORM UNDER THE CONTRACTS.

Relators' Count One alleges the government awarded Contract 1 based on false statements, *i.e.*, a fraud in the inducement. It fails. To state a fraudulent inducement claim, a relator must plead with particularity the specific falsehood, show a defendant "never had any intention" of carrying out its promise, *Strum v. Exxon Co., USA*, 15 F.3d 327, 331 (4th Cir. 1994), and show "prompt, substantial nonperformance." *United States ex rel. DRC, Inc. v. Custer Battles, LLC*, 472 F. Supp. 2d 787, 798 (E.D. Va. 2007) (citing *United States ex rel. Willard v. Humana Health Plan of Texas*

Inc., 336 F.3d 375, 386 (5th Cir. 2003)). Applied here, Relators must plead, with particularity: (1) what Contract 1 required, (2) what GLS promised, (3) that it was false, (4) that GLS failed to perform, and (5) that this was intentional. Relators fail to satisfy even one of these requirements.

A. Relators Fail to Plead That GLS Made Any Fraudulent Statement.

Relators fail to plead the "who, what, when, where, and how" of the alleged fraudulent inducement. *Wilson*, 525 F.3d at 379 (4th Cir. 2008). Relators have the burden of pleading the particulars of the alleged fraudulent representation, including the person who made it. *See, e.g.*, *Harrison*, 176 F.3d at 789. A fraud claim cannot survive under Rule 9(b) based on a broad allegation that someone, somewhere, at an unknown time, made a representation. *Id.* But this is all Relators offer. Relators fail to allege *who* made the representation. They also fail to allege, with particularity, *when* or *where* any false representation was made.

The deficiencies in Relators' pleadings are most glaring as to the *what* and *how* of the alleged false statement. Relators fail to plead *what* Contract 1 required, *what* GLS' fraudulent statement was with respect to that requirement, or *how* it was fraudulent. Their claims depend on a violation of Contract 1, but they do not plead the basics of that violation. They allege that "GLS did not intend to abide by the terms of the solicitation and Contract 1, nor the policies expressed in the Small Business Act [("SBA")]," but offer only vague references to teaming agreements and potential subcontractor activities. FAC ¶¶ 85-89. Even crediting these vague references as pointing to small business requirements, Relators do not allege the *actual requirement* implicated by their FCA claims. Relators instead refer to two broad contract provisions: Section H.4, requiring that GLS "submit a Small Business Subcontracting Plan," and Section H.14, requiring that the plan include target "levels of Small Business Participation" and procedures to ensure payment. FAC ¶¶ 69-70. As to how GLS performed under these provisions, Relators appear to lack firsthand

knowledge, pleading only "upon information and belief" that GLS developed and submitted a plan, without offering specifics. FAC ¶ 491.

To the extent Relators make allegations about GLS' work under the contract, they do not plead a particular misrepresentation. In fact, the FAC indicates that GLS performed as required. Relators plead that GLS developed and submitted a small business subcontracting plan (FAC ¶ 491) and then engaged small businesses per that plan (FAC ¶ 85). Relators' undeveloped citations to the Federal Acquisition Regulations ("FAR") (FAC ¶¶ 70, 73, 77-79) are similarly ineffective. The FAR sections cited, *e.g.*, Section 52.219-9, set out procedures for submitting a small business subcontracting plan. But Relators do not plead with particularity what GLS misrepresented as to these provisions or how GLS failed to meet these requirements.

Relators try to sidestep this shortcoming by focusing on policy aims they believe GLS should have considered in performing under the contract. Regardless of whether they are correct on their policy interpretations (they are not), policies are not requirements and are not a basis for fraudulent inducement. Relators point to broad policy aims (*e.g.*, FAC ¶¶ 73, 113 ("to diversify and strengthen the free market")) and assert that, given these aims, GLS should have performed differently. *See, e.g.*, FAC ¶ 95. But alleging how GLS performed is not the same as alleging what GLS *said at the time it sought the contract*. A purpose of Rule 9(b) is to give defendants notice of the alleged fraud. *United States ex rel. Grant v. United Airlines Inc.*, 912 F.3d 190, 197 (4th Cir. 2018) ("Rule 9(b)'s purposes of providing defendants notice . . . apply with special force to FCA claims."). Relators claim a fraudulent representation used to induce. But what did GLS misrepresent? Relators' failure to answer this basic question requires dismissal of this claim.

B. Relators Fail to Plead Non-Performance.

A fraudulent inducement claim requires a relator show "the defendant promptly followed

through on its intent not to perform by substantially failing to carry out its obligations." *DRC, Inc.*, 472 F. Supp. 2d at 798 (citing *Willard*, 336 F.3d at 386). Relators have not pled with particularity how GLS failed to perform under the contract. They have not identified the specific contractual provision at issue or pled a violation of such provision with the requisite particularity. Absent this basic information, GLS can only guess. This falls short under Rule 9(b). To the extent the contract is discussed, Relators seem to concede that GLS performed under the contract. Per Relators, Contract 1 required GLS develop a small business subcontracting plan. FAC ¶ 69. *As pled by Relators*, this is what GLS did. FAC ¶ 83. GLS was required to implement this plan. FAC ¶ 69. *As pled by Relators*, GLS negotiated and entered into arrangements with small businesses. FAC ¶ 83. Relators not only fail to state an FCA claim, they show adherence to the contract, not fraud.

Relators also attempt to question whether the small business subcontractors were actually "considered as *bona fide* independent small business." FAC ¶ 86. This is not a valid basis for a claim, either. *See A1 Procurement, LLC v. Thermcor, Inc.*, U.S. Dist. LEXIS at *4 (E.D. Va. July 5, 2017) (unreported) (holding that challenges to small business status did not demonstrate fraud because the defendant was a small business, participated in the program, and there was no SBA finding otherwise). And it is disproven by Relators' own pleading. The subcontractors were entitled to self-certify as small businesses, after which they were small businesses under the SBA. FAC ¶ 80. Relators plead that GLS' task allocation revoked this certification. FAC ¶ 86. But they plead no authority for this claim. As pled, certification is a legal status determined under the SBA. Even if Relators' claims regarding the work required of subcontractors were well pled (they are not), this allocation of work would not change a small business' status. In other words, Relators have not alleged a basis from which a small business' status could have been changed by GLS' management, regardless of the tasks subcontractors did or did not perform.

C. Relators Fail to Plead Falsity Because Their Allegations Rely on Their Own Subjective Interpretation of SBA Policy Goals.

Relators fail to allege an objectively false claim. Under the FCA, a relator cannot rely on broad contract language, general policy aims, or that he or she would have done things differently. Yet this is what Relators do here. They allege fraud by pleading that GLS did not delegate to subcontractors certain tasks that Relators feel best achieve SBA policy goals of "free enterprise" and promoting "a free marketplace." FAC ¶ 73. They try to support this claim by listing tasks that, in their view, best meet these goals. *See, e.g.*, FAC ¶¶ 87, 113.

Relators' theory fails as a matter of law. The FCA requires an "objective falsehood." *Wilson*, 525 F.3d at 377. *See also United States ex rel. Morton v. A Plus Benefits, Inc.*, 139 F. App'x 980, 983 (10th Cir. 2005) ("[L]iability under the FCA must be predicated on an objectively verifiable fact."). The language Relators cite from both Contract 1, *e.g.*, small businesses should have "*maximum practicable opportunity to participate*" (FAC ¶ 69), and SBA policies, "designed and intended to diversify and strengthen the free market" (FAC ¶¶ 96-113), does not state an objective requirement. Relators ignore this critical shortcoming and skip right to the tasks they feel best realize these policy goals. FAC ¶¶ 96-113. But they never point to any actual requirement or to any SBA provision or contract clause showing GLS was obligated to delegate *any* specific tasks, let alone *those Relators list*. As pled, what makes GLS' statements (and performance) fraudulent is that GLS did not adhere to Relators' personal view of how SBA policies should be implemented.

This is not an objectively false claim. *See, e.g.*, *Wilson*, 525 F.3d at 377 ("[Contractor's] alleged defalcations involve several general and relatively vague maintenance provisions, such as keeping vehicles 'in a safe operating condition and good appearance.' These sorts of claims do not qualify as objective falsehoods and thus do not constitute false statements under the FCA."). "An FCA relator cannot base a fraud claim on . . . his own interpretation of an imprecise contractual

provision" because to allow such claims "would render meaningless the fundamental distinction between actions for fraud and breach of contract." *Id.* at 378. Even if Relators are correct that GLS did not fully meet the SBA's policy goals and should have delegated more of the tasks Relators feel would help subcontractors, that is not a false claim. "[M]ere 'allegations of poor and inefficient management of contractual duties' are 'not actionable under the False Claims Act.'" *Kernan Hosp.*, 880 F. Supp. 2d at 688 (quoting *Wilson*, 176 F.3d at 789).

A disagreement over alleged "contractual nonperformance" is not a valid basis to plead fraudulent inducement. It is "more appropriately viewed as a basis for a breach of contract action, not a fraudulent inducement claim." *Wilson*, 525 F.3d at 380. Relators' list of tasks they would prefer GLS delegate shows this to be just such a disagreement about contract performance. Such a disagreement over *implementation* does not reasonably support an allegation of fraud in the contract's *formation*. And Relators' claims that GLS' performance was fraudulent are not credible here, given that GLS' approach was disclosed to the government during the CWC Hearing and the government continued to work with *and pay* GLS under the contract (Section IV., *infra*). In short, Relators cannot use personal views about SBA policy goals to plead an *objectively* false claim.

D. Relators Have Not, and Cannot, Plead That GLS Acted with Scienter.

The FCA punishes *knowingly* false conduct. Scienter is an essential part of the fraud allegation and must be well pled, including "specific facts that support an inference of fraud." *Wilson*, 525 F.3d at 379 (quoting *Willard*, 336 F.3d at 385). *United States ex rel. DeCesare v. Americare in Home Nursing*, 757 F. Supp. 2d 573, 583 (E.D. Va. 2010) ("Relator must give sufficient factual support for knowledge to satisfy Rule 9(b)."). The facts must show defendants made the alleged statements "knowing" they were false. Here, Relators must plead that GLS intentionally made false promises regarding its intent to perform and must plead facts supporting

an inference of fraudulent intent. Relators fall short. Relators never allege with particularity any false statement by GLS. Assuming Relators could offer such detail, their claims still fail because they have not alleged intent as to any specific GLS employee. Corporate scienter under the FCA cannot rest on "collective knowledge," but requires pleading that "a particular employee or officer acted knowingly." *United States v. Fadul*, No. 11-cv-0385-DKC, 2013 U.S. Dist. LEXIS 27909, at *29 (D. Md. Feb. 28, 2013). *See United States v. Sci. Applications Int'l Corp.*, 626 F.3d 1257, 1274 (D.C. Cir. 2010) ("'[C]ollective knowledge' provides an inappropriate basis for proof of scienter because it effectively imposes liability, complete with treble damages and substantial civil penalties, for a type of loose constructive knowledge that is inconsistent with the [FCA.]"). Relators do not identify a single GLS employee, let alone plead one who acted with intent and provide facts supporting this allegation.

Relators instead offer the bald statement that GLS "did not intend to abide" by the contract. FAC ¶ 85. This is merely a conclusion. *DeCesare*, 757 F. Supp. 2d at 583. Relators then attempt to support their statement by pointing to GLS' "subsequent course of conduct" under Contract 1. FAC ¶ 86. Conduct at an unspecified later point, after Contract 1 was signed, does not show GLS' intent when entering into the contract. *Wilson*, 525 F.3d at 379-80 ("Such a tenuous basis from which to infer [contractor's] intent is especially problematic in light of the fact that in the context of a fraudulent inducement FCA claim, the requisite intent must be coupled with prompt, substantial nonperformance" (internal quotations omitted)). Further, Relators' allegation that GLS sought to conceal its failure to perform under the contract is undermined by GLS' full public disclosure of these same facts to the government. At the 2009 CWC Hearing, GLS explained *to the government*, in detail, its work under Contract 1, including its subcontractor management model, ITMA, and the work performed by small businesses. GLS' public disclosure and full

explanation of the facts now at issue demonstrates GLS' lack of fraudulent intent.

E. Relators Have Not Pled These Subcontracting Issues Were Material Violations, Nor Can They, as the Government Continued to Pay Once These Were Disclosed.

Relators also fail to plead that the specifics of GLS' subcontracting model and use of small businesses were material to payment. Materiality is essential to pleading a false claim. *Universal Health Services, Inc. v. United States ex rel. Escobar*, 136 S. Ct. 1989, 2001-02 (2016). "[A] misrepresentation about compliance with a statutory, regulatory, or contractual requirement must be material to the Government's payment decision in order to be actionable under the False Claims Act." *Id.* This requirement is "strictly enforced." *United States v. Triple Canopy, Inc.*, 857 F.3d 174, 176 (4th Cir. 2017). Here, Relators fail to plead which subcontracting specifics were material. Instead, Relators try to use the general requirement that GLS develop a subcontracting plan to transform all subcontracting-related guidance into conditions material to payment. *See, e.g.*, FAC ¶¶ 73-75 (asserting that any violation of SBA Section 637(d) is a "material breach of contract"). Relators are incorrect. Their approach is contrary to *Escobar*, Rule 9(b), and logic.

Relators' assertion of materiality fails on its face because the government was placed on actual notice of the same facts during the 2009 CWC Hearing and continued making payments. The hearing set out GLS' subcontracting model in detail, including the ITMA, and raised specific concerns about whether GLS was performing most of the work while "subcontractors are responsible for seemingly very little." Linguist Support Services in Theater: Hearing Before the Commission on Wartime Contracting in Iraq and Afghanistan, at 9 (Aug. 12, 2009), at 9 (see Section IV., *infra*). These are the same facts on which Relators' subcontracting claims now rest. *See, e.g.*, FAC ¶ 113 ("The ITMA 'crippled' Small Business Defendants."). Critically, after these facts were presented at the hearing—at which the government contracting official who pays GLS'

invoices also testified—the government *continued paying GLS*. FAC ¶¶ 119, 166. Even if what Relator alleges amounted to a violation of Contract 1, it was not material. "[I]f 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." *Escobar*, 136 S. Ct. at 2003-04. This is what happened here.

F. Given Relators' Failure to State a Claim Under Contract 1, Their Claims Under Contract 2 also Fail.

Their allegations as to Contract 2 depend, as pled by Relators, on showing Contract 1 was fraudulently induced. Relators make no specific allegations as to the evaluation or selection of contractors, nor do they cite any authority making clear this award depended on performance under Contract 1. Rather, they plead only "upon information and belief" that Contract 2 was awarded to GLS based on performance of Contract 1. This shows Relators do not have the knowledge to plead this claim. In fact, Contract 2 was procured through a full and open competition, with other contractors (who had no role in Contract 1) awarded portions of Contract 2 alongside GLS.

II. RELATORS FAIL TO PLEAD AN ACTUAL FALSE CERTIFICATION, EXPRESS OR IMPLIED, OR A SINGLE FALSE CLAIM FOR PAYMENT, AND FAIL TO PLEAD EACH WITH THE REQUIRED PARTICULARITY.

Relators' Second Count is an attempt to plead that GLS made fraudulent representations when seeking payment on claims to the government. Relators allege that GLS' fraud extends to every possible representation: express and implied certifications made in connection with claims for payment and actual false submissions. They also appear to plead that these false representations apply to every claim under both Contract 1 and Contract 2. To support each theory Relators point back to the same two flawed issues: (1) Relators' interpretation of small business policies (FAC ¶¶ 526-27 (citing the "Small Business Subcontracting Plan, the FAR, and applicable federal small business statutes")) (hereafter, the "subcontracting claims"); and (2) Relators' own labor and

employment disputes, chiefly relating to the conditions in Kuwait around 2013, which they claim may be equated to violations of applicable labor laws (FAC ¶¶ 561-62 (citing "host nation labor laws," including Kuwaiti labor laws, and the FAR)) (the "labor claims").

A. Relators' Express False Certification Claims Fail Because They Do Not Plead the Specific Requirements at Issue, That These Provisions Were Prerequisites to Payment, That GLS Did Not Meet Specific Requirements, or a Deliberately False Certification Made with a Claim for Payment.

To state a false certification claim, Relators must plead the contract "required compliance with certain conditions as a prerequisite to a government benefit, payment, or program; the defendant failed to comply with those conditions; and the defendant falsely certified that it had complied with the conditions in order to induce the government benefits." *United States ex rel. Carter v. Halliburton Co.*, 08-cv-1162 (JCC), 2009 U.S. Dist. LEXIS 63649, at *33 (E.D. Va. July 23, 2009) (citing *Harrison*, 176 F.3d at 786). Relators fail to satisfy any of these elements under Rule 9(b). They have not sufficiently pled the terms and certification at issue, that compliance was a prerequisite to payment, what was false (*i.e.*, how GLS failed to comply), or that any such representation was made with scienter.

1) Relators Fail to Plead with Particularity the Legal or Contractual Requirements that were Prerequisites to Payment.

A false certification claim must identify the requirement implicated. Although discussed in relation to Relators' fraudulent inducement claims (Section I.C., *supra*), this point bears repeating: Relators do not plead the *specific legal or contractual requirement* that GLS violated. An express certification requires that Relators plead a particular certification in which GLS stated its affirmative compliance with a particular statutory, regulatory, or contractual provision. *Harrison*, 176 F.3d at 787. A well-pled claim cannot point simply to "the contract" (without identifying a specific requirement) or the broad aims of SBA "policy" (without identifying which

of hundreds of regulations is at issue). But, again, this is what Relators do here. For both the purported subcontractor and labor allegations, Relators do not identify a specific provision and how GLS violated it. Even if they did, Relators would then also have to link this provision to a well-pled certification. In fact, Relators never plead the substance of *any* actual GLS certification.

Relators plead generally that "GLS falsely certified that it had complied in good faith with its Small Business Subcontracting Plan, the FAR, and applicable federal small business statutes." FAC ¶ 498. But Relators never identify the specific requirements to which GLS was allegedly certifying. FAC ¶¶ 526-28. Relators' statement that GLS "certified that the work was being performed by the Small Business Defendant it listed in those reports [but] knew that the work under Contract 1 was actually being performed by GLS itself" proves the point. What report is at issue? What small business? Most critically, what work? The answer, according to Relators, is "work under Contract 1." FAC ¶ 527. This is insufficient under Rule 9(b).

Relators fail to plead with particularity a specific provision that was a prerequisite to payment. *Harrison*, 176 F.3d at 786; *United States ex rel. McLain v. KBR, Inc.*, No. 1:08-cv-499 (GBL/TCB), 2013 U.S. Dist. LEXIS 27061, at *20-*21 (E.D. Va. Feb. 27, 2013) (Relator must plead "payments are contingent upon either representations by the defendant or compliance with conditions alleged."). The few relevant provisions of Contract 1 that Relators even identify, H.4 and H.14, address small business participation and plans generally, and are not established as prerequisites to payment. And Relators do not plead how they would be. First, H.14 states an obligation only "*to comply in good faith*." FAC ¶ 69. Second, the provision discusses the submission of a form (the SF 294) but does not make clear that this is a certification. Nor do Relators plead as much. Even if it were, Relators would have to plead with particularity what representation on that form was fraudulent. They do not.

Instead, Relators fall back on pleading *all* small business subcontracting requirements, from any source, are prerequisites to payment under Contract 1. FAC ¶ 70. This is incorrect and nonsensical. Relators' approach would render meaningless the notion of a prerequisite. It is not enough to allege a false claim and incorporate "by reference . . . the 'regulatory framework.'" *United States ex rel. Gross v. AIDS Research All. Chicago*, 415 F.3d 601, 605 (7th Cir. 2005). Rule 9(b) requires particularity.

Relators' attempts to allege false certification based on their labor issues fare even worse. First, Relators do not plead with particularity a specific contractual provision or even make clear *which contract* their allegations concern. The FAC cites Contract 1 as the basis for these allegations. *See, e.g.*, FAC ¶ 7 ("Defendant's false claims to the U.S. under *Contract 1* consisted [of] . . . false representations to the U.S. that GLS was in compliance with Kuwaiti immigration and labor laws in order to receive payment *under Contract 1*; and continuous false representations to the U.S. that GLS was in compliance with the TVPRA . . . for payment under *Contract 1*." (emphasis added)). Per Relators, Contract 1 was in effect from roughly 2009 through the end of 2012. FAC ¶ 134. But Relators' dispute with Al Shora, visa issues, and alleged detention all occurred in 2013 (*e.g.*, FAC ¶¶ 135-50), when Contract 2 was in effect. FAC ¶ 2. While Relators plead "on information and belief" that Contract 2 was for "similar services" (FAC ¶ 91), they recognize changes that could impact their labor claims. *See, e.g.*, FAC ¶ 134. Relators must plead the certification with particularity, starting with the contract to which GLS is certifying compliance. They do not.

Relators also make vague allegations that GLS certified compliance with a range of potentially relevant labor laws. *See, e.g.*, FAC ¶ 529 (GLS certified "compliance with all U.S. laws and Kuwaiti labor and immigration law."). But despite repeated references to violations of

"immigration and labor law" (*e.g.*, FAC ¶¶ 7, 12, 120, 126), Relators generally do not identify which actual laws are relevant, the specific provisions at issue, or how they would apply to GLS. This is insufficient to plead an FCA claim.

More critically, Relators have not pled with specificity which labor-related provisions are prerequisites to payment. Relators only point to the general requirement that, "as a prerequisite to contract award, GLS was required to certify annually its compliance with host nation labor laws, through the U.S. On-Line Representations and Certifications Application ("ORCA") system." But Relators do not allege any specific certifications made in ORCA, which were incorrect, or how they were incorrect. They do not link this annual representation to actual payment. FAC ¶¶ 561-62. And they do not plead with particularity how the other "Kuwaiti immigration and labor laws" referenced were material to payment under either contract.

2) Relators Fail to Plead with Particularity How GLS Failed to Meet the Certification Provisions or Perform as Required.

To plead a false certification, Relators must also plead with particularity how GLS' conduct rendered its certification false. *See United States ex rel. Lambert v. Elliott Contracting, Inc*., No. 1:13-1106, 2015 U.S. Dist. LEXIS 29722, at *15 (S.D. W. Va. Mar. 11, 2015) (dismissing certification claims for failure to "allege fraudulent conduct with necessary specificity"). They have not. Instead, Relators assume violations of law and then jump to the conclusion that (unspecified) related claims were falsely certified. A court need not accept such unsupported legal conclusions as the basis for a false claim. *United States ex rel. Dugan*, Civ. No. DKC 2003-3485, 2009 U.S. Dist. LEXIS 89701, at *37 (D. Md. Sep. 29, 2009) (citing *Revene v. Charles County Commr's*, 882 F.2d 870, 873 (4th Cir. 1989)).

With respect to Relators' broad SBA claims, it is not enough for Relators to plead that, in their view, GLS should have performed differently. There is nothing in the regulatory catchall

cited by Relators that dictates specific tasks GLS must have performed or delegated. FAC ¶ 528 (citing the FAR and all applicable federal small business statutes). While Relators allege tasks that they would prefer a small business perform (FAC ¶¶ 96-111), they do not allege that GLS *certified* which tasks it performed or delegated to subcontractors. To the extent Relators reference any provision of the contracts, namely that "GLS falsely certified that it had complied in good faith with its Small Business Subcontracting Plan" (FAC ¶¶ 498, 526), Relators have not pled that this plan covered the specifics of work performed, let alone certification as to such specifics.

For their labor claims, Relators' similarly do not plead which of GLS' actions rendered its certification false. Relators have not identified what labor requirements are at issue. And Relators have not pled with particularity when, where, or how these provisions were violated. Relators plead that every claim submitted under both contracts was tainted but fail to establish on what basis. For example, Relators allude to GLS' work with Al Shora, but they never identify the specific legal or contractual requirements governing this work. *See, e.g.*, FAC ¶¶ 130-33. And Relators never link these requirements and GLS' actions to what GLS disclosed (or did not disclose) to the government. In fact, Relators never plead what GLS said, let alone with the required particularity. Rather, they again resort to pleading a fraud "upon information and belief." FAC ¶ 133. This is not a well-pled claim. Relators cannot transform the unfortunate circumstances they experienced in Kuwait into false claims. Their details are intentionally provocative, but also insufficient.

3) Relators Fail to Plead an Intentionally False Certification.

A well-pled claim must identify a particular certification made with knowledge and intent to deceive. *See DeCesare*, 757 F. Supp. 2d at 583-84. This requires Relators plead facts showing the relevant intent: "knowledge that its certifications allegedly contain false statements" at the

time. *Id.* at 584. Relators fail to plead that GLS acted with the requisite scienter in certifying its compliance with relevant small business or labor provisions. First, it is unclear what provision is at issue. Second, even assuming a violation, Relators must "present *facts* showing [GLS'] *knowledge* that its certifications falsely reported the absence of [violations]." *Id.* at 583. Relators only plead blanket allegations of scienter. *See, e.g.*, FAC ¶ 516. Relators do not plead specific facts supporting a plausible inference that GLS acted intentionally. And they do not plead facts showing scienter as to a *specific claim for payment*. *Wilson*, 525 F.3d at 380. Nor can they. Indeed, for a significant portion of the relevant time frame, most Relators had not yet been hired. Once hired, they did not have a role that would allow them to assess the intent of those making certification decisions. These gaps in knowledge are consistent with Relators' failings under Rule 9(b).

4) Relators Fail to Plead Actual Claims Presented with Particularity.

Certification is made in conjunction with a claim for payment. But Relators fail to plead presentment of a claim with particularity. The FCA "attaches liability, not to the underlying fraudulent activity or to the government's wrongful payment, but to the claim for payment." *Harrison*, 176 F.3d at 785 (internal citation omitted). *McLain*, 2013 U.S. Dist. LEXIS 27061, at *4. Submission of a claim is "the *sine qua non* of a False Claims Act violation." *Kernan Hosp.*, 880 F. Supp. 2d at 686. A relator "'must come to court with a claim in hand', and cannot rely on 'generalized, speculative suppositions' about how a claim might have been submitted." *Brooks*, 423 F. Supp. 2d at 526. *See United States ex rel. Black v. Health & Hosp. Corp.*, No. 08-cv-0390-RDB, 2011 U.S. Dist. LEXIS 32220, at *35 (D. Md. Mar. 28, 2011), *aff'd*, 494 Fed. Appx. 285 (4th Cir. 2012) ("For example, a complaint is insufficient if it fails to allege specific claims submitted to the government and the dates on which those claims were submitted.").

Across nearly 600 paragraphs, Relators have not pled the specifics of one actual claim

submitted by GLS. To the extent they address any submission and payment of claims, they resort to pleading "upon information and belief." *E.g.*, FAC ¶¶ 117, 119. Relators have not pled, even for one claim, "(i) the amount of the invoices, (ii) the time period covered by the invoices, (iii) the subject matter of the invoices, or (iv) the persons submitting the invoices." *Brooks*, 423 F. Supp. 2d at 526-27. Nor can they. This shortcoming again confirms Relators' lack of knowledge. They possess no inside information about GLS and were not in a position to witness the submission of a claim, who was involved, what was represented on the claim, *or GLS' intent when submitting*. Relators' knowledge is about a labor dispute. They have not pled facts that transform this into a fraud on the government.

B. Relators' Implied Certification Claims Fail to Satisfy Rule 8 or Rule 9(b).

Relying on the same theories of liability and supporting facts, Relators appear to plead implied certification as a backstop to their express certification arguments. Relators allege GLS "*at a minimum implied*" that "it was in compliance with all U.S. laws and Kuwaiti labor and immigration laws" (FAC ¶ 529 (emphasis added)) and otherwise indicated or implied certification with certain small business subcontracting authorities. FAC ¶ 536. Such allegations are insufficient. Implied certification still requires a well-pled claim under Rule 9(b). Relators must plead the specific representation and course of conduct with particularity. And given "concerns about fair notice and open-ended liability" with implied certification, a claim under this theory must meet "strict enforcement of the [FCA's] materiality and scienter requirements." *Escobar*, 136 S. Ct. at 1995. Given these rigorous standards, Relators fail to plead an implied certification claim.

It is unclear what Relators are claiming. The FAC does not plead what GLS implicitly certified to, what the noncompliance was that was not disclosed, or the request for payment. *See United States ex rel. Garzione v. PAE Gov't Servs.*, 164 F. Supp. 3d 806, 815 (E.D. Va.), *aff'd*,

670 Fed. Appx. 126 (4th Cir. 2016) (dismissing FCA claim where relator "has failed to sufficiently adduce facts that [contractor] withheld information about its noncompliance with material contractual requirements, or any other conditions for payment."). It also falls well short of meeting the critical materiality and scienter requirements. *Escobar*, 136 S. Ct. at 1995. Relators have not pled facts sufficient to show and "make plausible" that GLS "knew" its submission was inaccurate but went ahead anyway. *See Garzione*, 164 F. Supp. 3d at 815.

Relators try to use implied certification as a shortcut around the need for a well-pled claim, arguing that even if certification has not been well pled, "at a minimum" it was implied. FAC ¶ 529. Their two passing references to this theory are not enough. Without identifying what GLS said or implied, there is simply no way for GLS to respond. This falls well short of what is required under Rule 9(b). *See Grant*, 912 F.3d at 190. Indeed, on its own merits and as pled in the FAC, Relators' implied certification allegation does not even satisfy the requirements of Rule 8 ("a short and plain statement of the claim showing that the pleader is entitled to relief"). To the extent Relators seek to allege all claims were subject to implied certifications, this allegation fails for the reasons stated, *supra*. Accordingly, Relators' implied certification theory should be dismissed.

C. Relators' Actual False Submission Claims Are So Minimally Pled That They Fail to Satisfy Rule 8 or Rule 9(b).

Relators also attempt to plead that GLS submitted actual false claims for payment. FAC ¶ 488. To adequately plead an actual false submission, Relators must plead, with particularity, a false representation in the claim itself. This requires pleading the specifics of the submission, what in that submission was false, that the submitting party acted "knowingly" in presenting the false claim, and that the falsity was material. *United States ex rel. Herrera v. Danka Office Imaging Co.*, 91 F. App'x 862, 864 (4th Cir. 2004). Relators have pled none of this.

Relators have not identified the specifics of a single actual submission, including what

representations were made on the face of a claim or why the claim would be false on its face, much less done so plausibly and with the particularity required under Rule 9(b). Relators allege generally that GLS made "false statements and certifications" in one or more documents and Relators make general references to a small business subcontracting plan, unspecified subsequent reports before the Commission on Wartime Contracting, and/or unspecified documents that may have been part of a claim for payment. FAC ¶ 535. But, even putting aside which document is at issue, Relators never say what was false in the submission itself. It is not enough to say that GLS was not in compliance with law or contract. Even if that were true, this theory depends on pleading falsity, with particularity, *in the actual submission of the claim*. *See Herrera*, 91 F. App'x at 864 (finding that even if actual performance violated the contract, there is no direct false claim if the invoice is as required). Relators' pleading on actual false submissions does not met the basic requirements of Rule 8, let alone the heightened requirements of Rule 9(b).

III. RELATORS HAVE NOT PLED A REVERSE FALSE CLAIM.

Relators do not allege a reverse false claim. They merely use the label "reverse" to restate their other FCA theories. Their Count Three purports to plead a reverse false claim on the basis of GLS' false records or statements made "to avoid paying back" amounts owed to the government. FAC ¶ 544. But the amount owed that they identify is GLS' potential liability stemming from these allegations. This is not a reverse false claim.

A reverse false claim is predicated upon an obligation to repay. Under the FCA, Relators must plead a false statement "material to an obligation to pay or transmit money or property to the Government" or knowing concealment to avoid an "obligation." 31 U.S.C. § 3729(a)(1)(G). A reverse FCA action requires "a false statement made to knowingly avoid having to pay the government when payment is otherwise due." *United States ex rel. Branscome v. Blue Ridge Home*

Health Servs., Civil Action No. 7:16-cv-00087, 2018 U.S. Dist. LEXIS 40579, at *13 (W.D. Va. Mar. 13, 2018) (citing *Pencheng Si v. Laogai Research Found.*, 71 F. Supp. 3d 73, 88 (D.D.C. 2014)). An obligation is generally fixed by statute or contract. An obligation is *not* a cause of action or other opportunity to seek funds through litigation. *See United States ex rel. Landis v. Tailwind Sports Corp.*, 160 F. Supp. 3d 253, 269 (D.D.C. 2016) (collecting cases).

Relators have not pled an obligation under the FCA. And Relators' restatement of their other theories is not a reverse false claim. Relators are clear that the amounts GLS owes are the "payments it received from the U.S. under Contracts 1 and 2," including "penalties" and "damages" up to "three times the fill value of all such fraudulent claims." FAC ¶¶ 542-45. This is not a well-pled obligation. It is a restatement of the FCA's damages provision. Relators simply have not pled any fixed obligation to repay the government.

Further, as apparent from their limited pleading, Relators' purported "reverse" claims offer no new substance. They support this theory with cites to the conduct pled in support of their other theories. Courts have highlighted such overlap in dismissing similar attempts at "reverse" false claims. *See United States v. Berkeley Heartlab, Inc.*, 247 F. Supp. 3d 724, 733 (D.S.C. 2017). To allow such improperly pled "reverse" FCA claims to move forward would mean "just about *any* traditional false statement or presentment action would give rise to a reverse false claim action" on the same facts. *Id.* (quoting *Pencheng Si*, 71 F. Supp. 3d at 97). Accordingly, Relators' Count Three should be dismissed.

IV. RELATORS' FCA CLAIMS SHOULD BE DISMISSED BECAUSE THESE ALLEGATIONS WERE PUBLICLY DISCLOSED AND RELATORS ARE NOT AN ORIGINAL SOURCE.

Relators' FCA claims were publicly disclosed years before they brought this action. These prior public disclosures covered both Relators' subcontracting and labor-related allegations in

detail. Relators' current suit does not materially add to those disclosures, nor have Relators pled facts showing that they qualify as original sources. As a result, their FCA claims fail to clear the public disclosure bar and should be dismissed.

The FCA's public disclosure bar, 31 U.S.C. § 3730(e)(4), precludes a relator from bringing claims based on information already in the public domain. As a goal of the FCA is to encourage sources to bring fraud allegations to the government, the public disclosure bar serves the key function of "prevent[ing] 'parasitic' *qui tam* actions in which relators, rather than bringing to light independently-discovered information of fraud, simply feed off of previous disclosures." *United States ex rel. Siller v. Becton Dickinson & Co. by & Through its Microbiology Sys. Div.*, 21 F.3d 1339, 1347 (4th Cir. 1994). Relators bear the burden of proving a public disclosure does not preclude their FCA claims before their case can move forward. *United States ex rel. May v. Purdue Pharma L.P.*, 811 F.3d 636, 640 (4th Cir. 2016). They fail.

Because the public disclosure bar was amended March 23, 2010, and Relators' allegations appear to straddle that date, two versions are relevant here.[4] The pre-amendment bar applies to conduct that occurred before that date, and the post-amendment bar applies to conduct after it. *United States ex rel. Moore v. Cardinal Fin. Co., L.P.*, No. CCB-12-1824, 2017 U.S. Dist. LEXIS 46983, at *30 (D. Md. Mar. 28, 2017) (citing *May v. Perdue*, 737 F.3d 908, 914 (4th Cir. 2013)). As these claims fail to clear either version of the public disclosure bar, they should be dismissed.

A. Relators' Small Business Subcontracting Claims Were Publicly Disclosed in Congressional Hearings and Relators Are Not Original Sources.

The substance of Relators' subcontracting allegations was discussed, in detail, in the 2009

[4] In relevant part, in 2010 Congress amended the public disclosure bar as part of its reforms in the Affordable Care Act, including revisions to the basic public disclosure provision in Section 3730(e)(4)(A) and the original source exception in Section 3730(e)(4)(B). GLS assumes for purposes of this Motion that Relators' allegations date from before and after this amendment.

CWC Hearing. The hearing covered the specifics of the subcontracting model and the ITMA, and whether these were appropriate, including if GLS was performing too much of the work and subcontractors not enough. *See, e.g.*, FAC ¶ 113.

To assess a pre-amendment disclosure, the Fourth Circuit uses "a three-pronged analysis to determine (1) if there was a public disclosure, (2) if the relator's allegations were 'based upon' the public disclosure, and, if so, (3) whether the relator is nonetheless 'entitled to original source status' as 'an individual who has direct and independent knowledge of the information on which the allegations [ ] are based[.]'" *Black*, 494 F. App'x at 293. Pre-amendment, this was a jurisdictional bar. Relators have the burden, and if they fail to carry that burden their claims should be dismissed under Rule 12(b)(1). *United States ex rel. Vuyyuru v. Jadhav*, 555 F.3d 337, 348 (4th Cir. 2009). To the first, a congressional report, hearing, or investigation is a "public disclosure" under the FCA. 31 U.S.C. § 3730(e)(4)(A)(ii). The public record also shows the contracting officer, who received and paid GLS' claims under Contract 1, was present.[5] The hearing was also covered in the news sufficient to constitute a public disclosure "from the news media."[6] *Id.*

Relators bear the "burden of proving that the allegations underpinning [their] FCA claims were not 'based upon'" the public disclosure, per the second prong. *Vuyyuru*, 555 F.3d at 348.

[5] This hearing record remains publicly available. *See*, *e.g.*, Commission on Wartime Contracting in Iraq and Afghanistan, *Linguist Support Services in Theater: Hearing Before the Commission on Wartime Contracting in Iraq and Afghanistan* (Aug. 12, 2009), *available at:* https://tinyurl.com/y4g6xhvn. A court may consider such publicly available materials for purposes of a motion to dismiss, including evaluating a public disclosure. *See, e.g., United States ex rel. Beauchamp v. Academi Training Ctr., LLC*, 816 F.3d 37, 43 (4th Cir. 2016).

[6] The applicable news media stories are set forth in more detail in Defendant DynCorp International LLC's Memorandum in Support of its Motion to Dismiss. Most of these sources remain publicly available. *See*, *e.g.*, Elizabeth Newell Jochum, *Defense Says Extensive Outsourcing on Iraq Linguist Contract is Jacking Up Costs*, Gov't Exec. (Aug. 12, 2009), *available at:* www.govexec.com/defense/2009/08/defense-says-extensive-outsourcing-on-iraq-linguist-contract-is-jacking-up-costs/29745/.

Claims are "based upon" the public disclosure if the pleadings are "even partly" derived from it. *May*, 811 F.3d at 640. Relators have not met their burden nor offered any statement in this regard.

And Relators have not, per the third prong, met their burden of showing they are entitled to original source status. *Vuyyuru*, 555 F.3d at 348. To do so they must plead direct and independent knowledge of the specifics of GLS' subcontractor model and management. Knowledge is direct if Relators "acquired it through [their] own efforts, without an intervening agency" and it is independent if "not dependent on public disclosure." *Grayson v. Advanced Mgmt. Tech. Inc.*, 221 F.3d 580, 583 (4th Cir. 2000) (internal citation omitted). Relators have not pled that their knowledge was direct or independent, nor have they pled facts in support. Relators have not alleged that they had any role in the formation of GLS' subcontractor relationships or implementation of the ITMA model. Nor would such claims be reasonable. Relators were not a party to any GLS-subcontractor agreement. Relators were not even hired until after these arrangements were in place. And none of Relators had any role in those relationships or subcontracting functions.

Relators appear to have learned key elements of their subcontractor claims from the public record. Their FAC even cites to the CWC Hearing record and recognizes the hearing discussed GLS' role and practices on precisely these issues. FAC ¶¶ 164-71. The public disclosure bar serves to prevent Relators from relying on public sources, particularly where, as here, they rely on public material for their lack of essential knowledge.

B. Relators' Labor Claims Were Publicly Disclosed by Relators in the News Media and Relators' FAC Does Not Materially Add to Their Prior Disclosures.

Relators themselves publicly disclosed the substance of their labor allegations in a series of news stories in 2013. Relators provided significant detail on these allegations at the time. As a

result, these prior public disclosures mirror Relators' current allegations.

Post-amendment, the public disclosure bar "applies if substantially the same allegations or transactions were publicly disclosed," unless the relator is an original source. *May*, 737 F.3d at 917. To qualify as an original source, a relator must have "voluntarily disclosed to the Government the information on which allegations or transactions in a claim are based" prior to the public disclosure or plead "knowledge that is independent of and materially adds to the publicly disclosed allegations." 31 U.S.C. § 3730(e)(4)(B). Information "from the news media" expressly qualifies as "public disclosure" under the FCA. 31 U.S.C. § 3730(e)(4)(A).

It is apparent on the face of the current pleadings that these cover "substantially the same allegations" previously disclosed. The public reports cover GLS' alleged treatment of Relators, unacceptable living conditions, arrangements with Al Shora, and detention of certain Relators, among others. FAC ¶¶ 181-82. Indeed, these 2013 news articles are often virtually indistinguishable from the FAC. *See*, *e.g.*, Yochi Dreazen, *Investigation: No Exit*, Foreign Policy (October 2, 2013) ("[GLS interpreters were in] makeshift barracks are infested with bedbugs, and the nearest bathrooms are in trailers . . . aren't allowed to access the bases' military hospitals or leave the country for personal emergencies . . . [one was] arrested at the Kuwait City airport as he was preparing to board a flight back to the U.S. . . . [h]e was jailed for a week").[7] This overlap is unsurprising given that Relators are the source for both. They also disclosed these allegations, in detail, in their civil suit in the Eastern District of Virginia, which was shared via the news media.

Relators cannot save their claims as an original source. First, Relators have not alleged that they disclosed this information to the government prior to the public disclosures. Second, Relators'

[7] This article is available at: https://tinyurl.com/y2r9hp5c. Again, news media stories are collected in DynCorp International LLC's motion to dismiss filing.

FAC does not "materially add" to their own lengthy and detailed prior public disclosures. Nor have Relators pled what they now know that could materially add to their prior public disclosures. *See*, *e.g.*, *Moore*, 2017 U.S. Dist. LEXIS 46983, at *34 (holding the relators are not original sources where they did not proffer knowledge that materially adds to the public source material). On this record, the public disclosure bar, standing alone, warrants dismissal. Such dismissal is particularly appropriate where, as here, Relators themselves previously made the information public, failed to timely notify the government before doing so, and are using the FCA to revive their previously filed claims.

V. THE FCA'S STATUTE OF LIMITATIONS BARS ALL CLAIMS AGAINST GLS BASED ON CONDUCT BEFORE JUNE 19, 2009.

Finally, in addition to the deficiencies discussed above, the statute of limitations bars all of Relators' FCA claims based on conduct that occurred and claims submitted before June 19, 2009. The FCA imposes a six-year statute of limitations, which runs from the alleged violation. 31 U.S.C. § 3731(b)(1); *Dugan*, 2009 U.S. Dist. LEXIS 89701, at *11. Relators' original FCA complaint was filed June 19, 2015; six years earlier is June 19, 2009. This is the cut-off date for Relators' claims. This excludes essentially all of Relators' Count One (fraudulent inducement). As pled by Relators, the solicitation, bidding, representations from GLS about implementation (including its small business subcontracting plan), award of Contract 1, and first claims submitted thereunder all occurred in 2006-08. FAC ¶¶ 59-60. Any fraudulent inducement stemming from GLS' representations when seeking (and being awarded) Contract 1 occurred in that time frame. Where, as here, the actions that "fraudulently induced the Government to enter into a contract" occurred outside the limitations period, all claims based on that theory are time-barred. *Dugan*, 2009 U.S. Dist. LEXIS 89701, at *14. *See also United States ex rel. Sanders v. N. Am. Bus. Indus.*, 546 F.3d 288, 296 n.3 (4th Cir. 2008) (For subsequent violations within the limitations period to survive,

relator should allege timely "independent FCA violations."). Accordingly, Count One should be dismissed. To the extent Relators' broad framing may allege that GLS' claims submitted before June 19, 2009 were also false under the theories stated in their Counts Two and Three, these are also time-barred.

VI. PLAINTIFFS' TVPRA ALLEGATIONS FAIL TO STATE A CLAIM.

Plaintiffs' labor claims under the TVPRA, while separate from their FCA claims, misinterpret the reach of the statute and fail to state a claim under Rule 8.

A. Plaintiffs' TVPRA Claims Relating to Confiscation of Passports, Under Section 1592, Should Be Dismissed for Lack of Jurisdiction.

A significant portion of Plaintiffs' TVPRA claims fail as a matter of jurisdiction. Plaintiffs have the burden of establishing that their claims are properly brought. They have not met this burden given the presumption against extraterritoriality. It is a "longstanding principle of American law 'that legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States.'" *Morrison v. Nat'l Australia Bank Ltd.*, 561 U.S. 247, 255 (2010). Unless a statute gives a clear indication of extraterritorial application, it has none. *Id*. Plaintiffs allege violations arising out of TVPRA Sections 1589(a) and 1592(a) and (b).

The TVPRA's reach is dictated by statute, 18 U.S.C. § 1596. FAC ¶ 55. The statute limits U.S. courts' "extra-territorial jurisdiction" to "any offense . . . under section 1581, 1583, 1584, 1589, 1590, or 1591" of the TVPRA. In other words, TVPRA Section 1596 is explicit that only these six provisions have extraterritorial effect. Section 1592, prohibiting the confiscation of passports, is *not* one of them. Yet Plaintiffs repeatedly allege confiscation of their passports as the foundation of GLS' alleged TVPRA violations. Plaintiffs cite it dozens of times (*e.g.*, FAC ¶¶ 11, 15, 182-83, 191-201, 219-23) and frame it as the best evidence of the alleged mistreatment. *See* FAC ¶ 185 ("[Plaintiffs] reasonably believed that they had no choice, due to GLS's absolute

control over their lives, as manifested . . . *by GLS's confiscation of their passports* . . ." (emphasis added)). But, as pled, any confiscation of passports occurred *in Kuwait*. FAC ¶ 574. Plaintiffs have not pled a specific basis for jurisdiction over these claims or rebutted the presumption against extraterritorial application. As a result, these claims must be dismissed.

B. Plaintiffs' Other TVPRA Claims, Under Section 1589, Are Deficiently Pled.

Plaintiffs' remaining allegations, pled under the broader Section 1589, are deficiently pled as to GLS, are contradictory, and fail to make out a claim under the relevant provisions of the law. Rule 8(a) requires "more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Ashcroft*, 556 U.S. at 678. And as these are individual harms, Plaintiffs must plead a claim as to each named individual. Plaintiffs' handful of vague allegations fail to clear Rule 8's bar.

Under Section 1589(a), Plaintiffs must show GLS "knowingly provide[d] or obtain[ed] the labor or services of a person" by one of four specific means: (1) "force, threats of force, physical restraint, or threats of physical restraint to that person or another person"; (2) "serious harm or threats of serious harm to that person or another person"; (3) "abuse or threatened abuse of law or legal process"; or (4) "scheme, plan, or pattern intended to cause the person to believe that, if that person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint." Plaintiffs fail to state a claim on any of these TVPRA grounds.

Section 1589 of the TVPRA was designed to protect "victim[s] of a severe form of trafficking," specifically sex trafficking or cases of "involuntary servitude, peonage, debt bondage, or slavery." *See* 22 U.S.C. § 7102. Plaintiffs have not pled or alleged facts that would show such circumstances. In fact, Plaintiffs were well-compensated linguists who willingly entered into agreements with GLS or subcontractors. While parts of Plaintiffs' situation were unfortunate, they are far from those faced by sex trafficking and peonage victims who the statute aims to protect.

Addressing each prong confirms this. First, as to prongs (1) and (2), Plaintiffs do not allege they were coerced to work by GLS' use of "force, threats of force, or physical restraint," or by "serious harm or threats of serious harm" by GLS. To the extent any harm is pled, it results from forces outside of GLS' control. These include accidents (FAC ¶ 346 (Plaintiff slipped in the shower and army medics would not treat)), and environmental conditions in military housing on a U.S. military base (FAC ¶ 186 (Plaintiffs suffered from transmission of infections, pest infestations, and respiratory ailments)). This is not "serious harm," nor was it caused by GLS.

As to prong (3), abuse or threatened abuse of law or legal process, Plaintiffs have not provided a basic, coherent statement of a claim. The TVPRA defines such abuse as the use of laws or legal process in a "manner or for any purpose *for which the law was not designed, in order to exert pressure* on another person to cause that person to take some action or refrain from taking some action." 18 U.S.C. § 1589(c)(1) (emphasis added). Plaintiffs allude to various circumstances in Kuwait, but do not plead the use of law in a manner for which it "was not designed." *Id*. Nor do they plead that GLS used these laws "knowingly" and with the purpose of "coerc[ing"] Plaintiffs. *Muchira v. Al-Rawaf*, 850 F.3d 605, 622-23 (4th Cir. 2017).

As an initial matter, Plaintiffs' lack knowledge of the underlying facts, pleading "upon information and belief" as to the dispute between GLS and Al Shora. FAC ¶138-39. They have not pled what GLS knew about Kuwaiti law, how GLS used the law, and that this use of laws was to coerce. (Note that this is also fatal to their TVPRA-based FCA claims, as they have not pled scienter). Instead, Plaintiffs seem to equate a dispute under Kuwaiti laws with an *abuse* of laws. They do not plead why this is the case. For example, Plaintiffs allege they were "in situations where GLS knew that they were likely to be arrested," per a foreign warrant." FAC ¶ 584. Assuming this is true, the possibility of arrest does not violate the TVPRA or show abuse of laws

by GLS. GLS did not cause the arrests or report Plaintiffs to authorities—Plaintiffs admit that Al Shora did. FAC ¶ 145. GLS responded by warning linguists of the possibility of arrest. FAC ¶ 331. As Plaintiffs plead elsewhere, this was a true statement. FAC ¶ 149. An employer may truthfully warn employees of real immigration consequences. *See Muchira*, 850 F.3d at 622-25. None of this alleges use of laws for a "purpose for which the law *was not designed*." Even if GLS violated the law, the TVPRA "requires more than evidence that a defendant violated other laws." *Muchira*, 850 F.3d at 622. While unfortunate that Al Shora created visa issues for Plaintiffs, Plaintiffs have not pled any abuse of laws, nor abuse specifically by GLS. Paradoxically, Plaintiffs then also allege that GLS violated the TVPRA by not helping Plaintiffs *evade* these warrants. FAC ¶ 236. To the extent Plaintiffs' concern seems to be with the warrants themselves, it is not for a U.S. court to review the validity of Kuwait's application of Kuwaiti laws. *See Hawkins v. Hutchison*, 277 F. App'x 518, 520 (5th Cir. 2008). Nor is it the purpose of the TVPRA.

Finally, Plaintiffs do not plead prong (4): a "scheme, plan, or pattern" through which GLS indicated that they "or another person would suffer serious harm or physical restraint." Based on the foregoing, Plaintiffs' TVPRA claims should be dismissed for failure to state a claim.

VII. RELATORS' AMENDED COMPLAINT SHOULD BE DISMISSED WITH PREJUDICE BECAUSE AMENDMENT WOULD BE FUTILE.

Relators' FAC should be dismissed with prejudice because further amendment would be futile. Leave to amend should not be given where Relators already had an opportunity to amend the complaint and further amendment would be futile. *Abraham v. Woods Hole Oceanographer Inst.*, 553 F.3d 114, 117 (1st Cir. 2009). Relators have been investigating and pursing claims against GLS for at least six years (per their employment complaints), the last four with the government's help, before it declined to intervene. In that time, they filed four different complaints across two matters. Yet they still fall short of stating a valid claim.

Under these circumstances, permitting a further opportunity to amend the complaint would be futile, as Relators clearly have nothing more to add. At the time Relators filed their FAC, they were fully aware that FCA actions are subject to the FCA's statute of limitations, public disclosure bar, and the heightened pleading standards of Rule 9(b). Yet, Relators have failed to comply with any of these requirements. Nor can they. To the extent their claims should be dismissed because of the running of the statute of limitations, another round of amendments will not turn back time. To the extent their claims should be dismissed under the public disclosure bar, another round of amendments will not correct their own missteps—namely that Relators *chose* to file two labor and employment complaints and take their issues to the media *before* bringing this case.

For all of Relators' allegations, years of investigation and multiple complaints, they cannot identity a single claim, certification, or contract provision needed to state a false claim. To the extent they know anything about the contracts, it is from public sources. Rule 9(b) prohibits Relators from tarnishing GLS' reputation and engaging in a fishing expedition (at GLS' expense) to find facts that might actually support their vague allegations of fraud. Given that Relators have already had four bites at the apple, there is no reason to give them a fifth. *See Jallali v. Nova Se. Univ., Inc.*, 486 F. App'x 765, 767 (11th Cir. 2012) (affirming dismissal with prejudice where relator failed to allege facts showing fraud and lacked personal knowledge of billing practices); *Black*, 2011 U.S. Dist. LEXIS 32220, at *43 (dismissing with prejudice under the public disclosure bar and for failure to state an FCA claim). As such, the FAC should be dismissed with prejudice.

CONCLUSION

For all these reasons, GLS respectfully requests that the Court grant GLS' Motion to Dismiss Relators' First Amended Complaint with prejudice.

Dated: February 15, 2019

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 15, 2019 I caused the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of the filings to all counsel of record.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

UNITED STATES OF AMERICA *ex rel.* ELGASIM MOHAMED FADLALLA, *et al.*,	)	
Plaintiff,	)	
v.	)	Case No. 8:15-cv-01806-PX
DYNCORP INTERNATIONAL LLC, *et al.*	)	
Defendants.	)	

DEFENDANT DYNCORP INTERNATIONAL LLC'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION TO DISMISS RELATORS' FIRST AMENDED COMPLAINT

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Defendant DI International LLC ("DI"), through its undersigned counsel, respectfully submits this memorandum of law in support of its motion to dismiss the First Amended Complaint ("Complaint" or "FAC").

I. PRELIMINARY STATEMENT

DI is a defendant solely because DI owns a fifty-one percent membership interest in Defendant Global Linguist Solutions, LLC ("GLS").[1] The Complaint alleges no misconduct by DI. Instead, DI is alleged to be the alter ego of its partially owned subsidiary GLS, notwithstanding their corporate separateness and the absence of any of the extraordinary circumstances that would warrant "piercing the corporate veil."

Plaintiffs ("Relators") have long sought a forum that they hope will ignore federal common law limitations on "piercing the corporate veil," and permit Plaintiffs to bring what are state law employment-based claims disguised as federal questions. Initially, in Virginia, Relators filed claims under state law on the same set of facts against GLS, DI and AECOM over five years ago.[2] Relators now attempt to revive these same employment and contract claims, dressed up as purported violations of the civil False Claims Act ("FCA") and the Trafficking Victims Protection Reauthorization Act ("TVPRA"). *See* 31 U.S.C. § 3729 *et seq*.; 18 U.S.C. § 1581 *et seq.* Relators hoped that the United States would take up their FCA claims, but after a two year investigation, the United States declined to intervene.

DI incorporates by reference and joins all of the arguments, including those FCA related arguments pertaining to Fraud in the Inducement, Express Certification, Implied Certification, Actual Submission, and Reverse False Claims, as set out in the memoranda of law separately

[1] Defendant AECOM National Security Programs, Inc. ("AECOM") owns the other forty-nine percent.

[2] These Virginia claims were ultimately voluntarily dismissed by Relators as to DI.

filed today by GLS and AECOM, respectively. Additionally, the Complaint fails to state a claim and should be dismissed with prejudice against DI under Rule 12(b)(6), and this Court lacks subject matter jurisdiction over the FCA claims under Rule 12(b)(1), for the following reasons:

First, Relators failed to adequately plead facts required under applicable federal law to disregard DI's and GLS's corporate separateness. DI and GLS are separate limited liability companies ("LLCs") that, by virtue of their good standing in Delaware, are presumed to have observed the requisite corporate formalities required to maintain their separate identities – in the absence of contrary specific allegations which are not pled in the Complaint. Moreover, none of the exceptional circumstances (fraud, injustice, lack of financial independence, ignoring corporate forms) necessary to reach DI by "piercing the corporate veil" are pled in the Complaint. DI should be fully dismissed with prejudice on this basis alone.

Second, the FCA claims alleging the submission of false claims, false statements and reverse false claims should be dismissed for lack of jurisdiction under Rule 12(b)(1), and failure to state a claim under Rule 12(b)(6), because they are subject to the FCA's public disclosure bar, and Relators were never the "original source" of these allegations. To the contrary, prior 2009 public testimony before the Commission on Wartime Contracting ("the Commission") and numerous prior newspaper articles revealed these same allegations, including the Complaint's central claims based on the alleged impropriety of GLS's relationships with the subcontractor defendants. The Relators also were untimely in disclosing their allegations to the United States before filing suit and these allegations did not materially add to previous public information or otherwise aid the government.

Third, Relators' FCA claims should also be dismissed for failure to be pled with particularity under Rule 9(b). Relators too often rely upon information and belief pleading in

support of the essential elements of knowledge, causation, and the materiality of their FCA claims. Relators also improperly use group pleading to lump multiple parties together and fail to describe the necessary details of the "who, what, where and when" of their claims, as required under Rule 9(b). In addition, Relators' FCA claims that predate June 19, 2009 are also time barred.

Finally, the Complaint also fails to state a claim under the TVPRA. Relators willingly entered into written employment agreements with GLS. Under the agreements, they knowingly assumed the risks and dangers associated with providing translating services to combatants in or near war zones, including Iraq and Kuwait. In these circumstances, Relators do not adequately allege, as required under the TVPRA's "Forced Labor" provisions, that they were forced to provide their services in these potentially dangerous locations. In addition, Relators fail to state a claim under the TVPRA's Forced Labor provisions, and, therefore, cannot establish claims against DI under the TVPRA's benefits provision. 18 U.S.C. § 1589(b); 18 U.S.C. § 1592.

II. BACKGROUND

A. DESCRIPTION OF THE PARTIES

DI is a Delaware LLC defense contractor providing military and non-military support to the United States and foreign governments around the globe, often in war zones. FAC ¶ 17. AECOM is a Virginia corporation which provides technical, management and professional consulting services to the United States. *Id.* ¶ 18. GLS is a Delaware LLC in which DI and AECOM are members. *Id.* ¶ 19. GLS is the prime contractor for Contracts 1 and 2 (defined below). *Id.* ¶ 2. DI and AECOM formed GLS as an independent company to provide translation services to government clients. GLS continues to provide such services to this day. The remaining defendants are small business subcontractors. *Id.* ¶¶ 50-54. Relators allege that they worked for GLS as linguists. *Id.* ¶ 16.

B. THE CURRENT LITIGATION

The original Complaint in the present FCA and TVPRA case was filed under seal on June 19, 2015, seeking the intervention of the United States in the FCA claims. ECF No. 1. The FAC was filed on March 25, 2016, when AECOM and an additional subcontractor, KMS Solutions, LLC ("KMS"), were added as defendants. ECF No. 9; FAC ¶¶ 18, 54. The other named subcontractor defendants included Shee Atika ("Shee Atika"), Invizion, Inc. ("Invizion"), Tigerswan, Inc. ("Tigerswan") and Thomas Wright, Inc. ("Thomas Wright") (together with KMS, the "Subcontractor Defendants").

Essentially a rehash of the linguists' employment and contract claims from the earlier Virginia litigations, Relators' current claims are centered upon the performance by the prime contractor, GLS, of two government contracts.[3] FAC ¶ 2. The first of the two contracts was Contract No. W911W4-08-D-0002 and was awarded on or about December 5, 2007 ("Contract 1"), long before Relators allege any wrongdoing by Defendants. *Id.* Contract 1 called for the provision of linguists or translators for the U.S. Army and other agencies supporting Operation Iraqi Freedom in the Middle East. *Id.* ¶ 3. The second contract, Contract No. W911W4-11-D-0004 ("Contract 2") was awarded to GLS as prime contractor on or about July 11, 2011. *Id.* ¶ 2.

Relators allege that they worked as security cleared linguists under Contract 1, Contract 2, or both. *Id.* ¶ 5. Allegedly, GLS overbilled the United States based upon knowing misrepresentations by GLS regarding contract performance with respect to utilizing small business subcontractors. GLS also allegedly mismanaged the Kuwaiti subcontractor, Al Shora ("Al Shora"), in employment and immigration matters, causing Relators for a time to be unable to leave the military bases where they worked. *Id.* ¶¶ 7, 15, 182-83.

[3] For a discussion of the Virginia litigations, *see*, *infra*, pages 6-8.

The FAC asserts three counts under the False Claims Act (the submission of false claims, statements and reverse false claims, *Id.* ¶¶ 488-547) and one count under the TVPRA (*Id.* ¶¶ 548-93). DI is completely absent from any of these allegations, apart from the assertion that DI and GLS are alter egos.

C. PUBLIC DISCLOSURES

1. The Commission on Wartime Contracting in Iraq and Afghanistan[4]

On Wednesday, August 12, 2009, the Commission on Wartime Contracting in Iraq and Afghanistan held a hearing on linguist support services in Iraq and addressed Contract 1.[5] The Chairman noted, "This hearing will feature government and industry testimony about structure, operation, and oversight of this contract [to provide linguistic services], which involves extensive subcontracting. Therefore, [there is] the potential for significant added cost that may or may not reflect proportional added value. That will be the focus of this hearing." Hearing Transcript at 1.

John Houck, the President of GLS, testified at the hearing along with many others. *Id.* at 2. Much of the testimony addressed the share of the work performed by the small business

[4] Under Rule 12(b)(6), a court "may … consider documents attached to the complaint … as well as those attached to the motion to dismiss, so long as they are integral to the complaint and authentic." *Philips v. Pitt Cty. Mem'l Hosp.*, 572 F.3d 176, 180 (4th Cir. 2009). The Wartime Commission Hearings are addressed directly in the Complaint. FAC ¶¶ 164–177. Additionally, this Court may take judicial notice of any such documents and public records. Fed. R. Evid. 201; *James v. Acre Mortg. & Fin., Inc.*, 306 F. Supp. 3d 791, 799 (D. Md. 2018), *appeal filed* No. 18-1229 (4th Cir. Mar. 2, 2018)*; see also Hedley v. ABHE & Svoboda, Inc.*, Civil Action No. A. RDB-14-2935, 2015 WL 4626880, at *2, n.5 (D. Md. July 31, 2015).

[5] *The Commission on Wartime Contracting in Iraq and Afghanistan: Hearing on Linguist Support Services in Theater* (Aug. 12, 2009), https://cybercemetery.unt.edu/archive/cwc/20110930032251/http://www.wartimecontracting.gov/images/download/documents/hearings/20090812/Transcript-Linguist_Support_Contracts_20090812.pdf [hereinafter Hearing Transcript].

subcontractors -- mirroring Relators' allegations in the Complaint.[6] During the course of the hearing, Commissioner Zakhim expressly questioned whether the subcontracting arrangement existed because "[GLS] had to meet a 35 percent small business goal and they really did not want the small businesses to do anything but **to satisfy the government**?" *Id.* at 21 (emphasis added).[7] Another witness questioned whether payroll functions needed to be done by twelve different subcontractors. *Id.* at 21-22. "[The subcontractors provide] what is called advisory management support, which one could argue really is no support at all, really." *Id.* at 23. This Congressionally mandated Commission hearing was also widely reported in the press.[8]

2. Newspaper and Other Reports Concerning the Previous Litigations

The Complaint was also preceded in 2013 by widespread publicity pertaining to the previous Virginia litigations.[9] This publicity exclusively related to the human trafficking aspects of the Complaint. The Virginia litigations included two suits: *Zinnekah v. Global Linguist Solutions*, Case No. 1:13-CV-1185 (E.D. Va.) ("the Zinnekah litigation"); and *Zaklit v. Global*

[6] The Commission testimony addressed concerns that the subcontractors were not involved in hiring or managing the linguists other than to pay the amount stipulated by GLS, and that at least nine of the subcontractors were qualified small businesses. *Id.* at 8.

[7] "They basically gave them money to give to the translators and that is it? . . . . [It may be] that says something about . . . our small business goals and the way we do things . . . ." *Id.* at 21-22.

[8] An article published on August 12, 2009, described the role played by the subcontractors and focused on payroll. Questions were raised as to the business necessity for the subcontractors under these circumstances and about the resulting increase in costs. *See* Elizabeth Newell Jochum, *Defense Says Extensive Outsourcing on Iraq Linguist Contract is Jacking Up Costs*, Gov't Exec. (Aug. 12, 2009), https://www.govexec.com/defense/2009/08/defense-says-extensive-outsourcing-on-iraq-linguist-contract-is-jacking-up-costs/29745/.

[9] *See, e.g.*, Ryan Abbott, *Workers Claim DynCorp Abandoned Them*, Courthouse News Serv. (Sept. 25, 2013), https://www.courthousenews.com/workers-claim-dyncorp-abandoned-them/ (discussing *Zinnekah* complaint); Yochi Dreazen, *No Exit*: *The Kafka-esque story of the U.S. Translators Being Held Against their Will in a Kuwaiti Hangar*, Foreign Policy (Oct. 2, 2013), https://foreignpolicy.com/2013/10/02/no-exit-3/ (same); Elizabeth Warmerdam, *Linguists Say Dispute Trapped Them in Kuwait*, Courthouse News Serv. (Oct. 8, 2013, 11:55 PM), https://www.courthousenews.com/linguists-say-dispute-trapped-them-in-kuwait/ (discussing *Zaklit* complaint).

Linguist Solutions, LLC, Case No. 1:14-cv-314 (E.D. Va.)[10] ("the Zaklit litigation") (together "the Virginia litigations"). Relators' counsel in this case, Joseph A. Hennessey, was counsel in the Zinnekah litigation and most of the Relators in this case were also plaintiffs in the Zinnekah litigation. *Zinnekah*, Compl., ECF No. 1 ¶¶ 6-24. GLS moved to dismiss the Zinnekah Plaintiffs' claims based in part upon the Foreign Service Agreements ("FSAs"). The FSAs contain numerous disclosures regarding the risks and dangers of the potential assignment locations. *See* GLS LLC's Memo. in Support of Mot. to Dismiss and Mot. to Strike, ECF No. 23, *Zinnekah*, 43-295.[11]

Newspaper accounts of the allegations in the Virginia litigations appeared in widely disseminated publications before and after the suits were filed. For example, the Washington Times reported on June 19, 2013, that 100 American citizens were trapped for two months on two U.S. bases inside Kuwait after police issued warrants for their arrest. *See* Cheryl K. Chumley, *100 Americans Trapped in Kuwait Over Contract Snub*, Wash. Times (June 19, 2013), https://www.washingtontimes.com/news/2013/jun/19/100-americans-trapped-kuwait-over-contract-snub/. Certain Relators were widely quoted in these articles, saying that they were

[10] The *Zaklit* complaint was originally filed in the Superior Court of California for the County of Los Angeles and is available at: Declaration of Katherine V.A. Smith, ECF No. 2, *Zaklit*, Case No. 1:14-cv-314 (E.D. Va).

[11] In both of the Virginia litigations, DI was voluntarily dismissed by plaintiffs as to all claims, including piercing the corporate veil claims. *See* Notice of Voluntary Dismissal, ECF No. 45, *Zinnekah v. Global Linguist Solutions*, Case No. 1:13-cv-01185 (Nov. 22, 2013); Order, ECF No. 61, *Zinnekah*, (E.D. Va. Dec. 2, 2013); Order, ECF No. 74, *Zaklit v. Global Linguist Solutions, LLC*, Case No. 1:14-cv-314 (E.D. Va. Apr. 29, 2014). In the Zaklit litigation, most of the claims were dismissed by the Court prior to the dismissal of the entire proceeding. *See* Caroline Simson, *Army Translators' Distress Claims Pared in Contractor Dispute*, Law360 (Sept. 2, 2014, 8:19 PM), https://www.law360.com/articles/572639/army-translators-seek-class-cert-in-false-imprisonment-suit (attaching link to Mem. Op., ECF No. 140, *Zaklit v. Global Linguist Solutions, LLC*, Case No. 1:14-cv-314 (E.D. Va. Sept. 14, 2014), https://www.law360.com/articles/578004/attachments/0).

under stress because they could not leave the base, and complaining that Al Shora fabricated charges against them. *See* Cristina Corbin, *Captive in Kuwait: Contract Dispute Leaves 100 Americans Stranded on US Army Bases*, Fox News (June 18, 2013), https://www.foxnews.com/world/captive-in-kuwait-contract-dispute-leaves-100-americans-stranded-on-us-army-bases.

Other media reports, also prior to the Complaint in this case, disclosed litigation filed by one of the Subcontractor Defendants, Shee Atika ("Shee Atika litigation").[12] The Shee Atika litigation raised the identical allegations raised by Relators in the Complaint. For example, Shee Atika argued that GLS did not award sufficient subcontract work to satisfy the Guaranteed Work Share provision of the prime contract. *Shee Atika* Compl., ECF No. 1 ¶¶ 2-3. The Court granted summary judgment in favor of GLS. *Shee Atika* Mem. Op. 29-30, ECF No. 80 (E.D. Va. Aug. 1, 2014); *aff'd* Op., ECF No. 28, No. 14-1904, 601 F. App'x 224 (4th Cir. May 5, 2015).

III. STANDARD OF REVIEW

A. FAILURE TO STATE A CLAIM, RULE 12(b)(6)

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quotation omitted). A claim is plausible on its face when "the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* Under Rule 12(b)(6), a court must take all the factual allegations in the complaint as true, but a court is "not bound to accept as true a legal conclusion

[12] *See, e.g.*, Stewart Bishop, *Army Translation Contractor Breached $697M Deal, Suit Says*, Law360 (July 16, 2013, 8:31 PM), https://www.law360.com/articles/457435/army-translation-contractor-breached-697m-deal-suit-says (attaching link to Complaint, *Shee Atika Languages, LLC v. Global Linguist Solutions, LLC*, 1:13-cv-850 (E.D. Va. July 12, 2013), https://www.law360.com/articles/457435/attachments/0).

couched as a factual allegation." *Papasan v. Allain*, 478 U.S. 265, 286 (1986); *Monroe v. City of Charlottesville*, 579 F.3d 380, 385-86 (4th Cir. 2009), *cert. denied*, 559 U.S. 992 (2010); *Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc.*, 591 F.3d 250, 255 (4th Cir. 2009).

B. THE PARTICULARITY REQUIREMENTS OF RULE 9(b)

Claims under the FCA are predicated upon allegations of fraud and are therefore subject to a heightened pleading standard which requires that "the circumstances constituting fraud" be stated "with particularity." Fed. R. Civ. P. 9(b); *United States ex rel. Godfrey v. KBR, Inc.*, 360 F. App'x. 407, 410 (4th Cir. 2010); *Harrison v. Westinghouse Savannah River Co.*, 176 F.3d 776, 783-84 (4th Cir. 1999). Rule 9(b)'s purpose of providing defendants with notice of their alleged misconduct applies with special force to FCA claims and the accompanying presentment requirement. *United States ex rel. Grant v. United Airlines, Inc.*, 912 F.3d 190, 197 (4th Cir. 2018).

"To meet the requirements of Rule 9[(b)], an FCA complaint must describe the *time, place, and contents* of the false representations, as well as *the identity of the person making the misrepresentation and what he obtained thereby*" with particularity. *Godfrey*, 360 F. App'x. at 410 (emphasis added) (quotations omitted); *Harrison*, 176 F.3d at 784. Courts often refer to these facts as the "who, what, when, where, and how" of the alleged fraud. *Godfrey*, 360 F. App'x. at 410.

If a Relator pleads fraud allegations against multiple defendants, "the complaint must apprise each defendant of the specific nature of his or her participation in the fraud." *United States ex rel. Brooks v. Lockheed Martin Corp.*, 423 F. Supp. 2d 522, 526 (D. Md. 2006). "Defendants cannot simply be grouped together without specification of which defendant committed which wrong." *United States ex rel. Ahumada v. Nat'l Ctr. for Employment of the Disabled*, Civil Action No. 1:06-CV-713, 2013 WL 2322836, at *3 (E.D. Va. May 22, 2013)

(quotation omitted), *aff'd sub nom. United States ex rel. Ahumada v. NISH*, 756 F.3d 268 (4th Cir. 2014).

Rule 9(b) also governs whether there is an insufficiency to relator's piercing the corporate veil allegations in an FCA case. *See United States v. Universal Health Servs., Inc.*, No. 1:07CV00054, 2010 WL 4323082, at *4 (W.D. Va. Oct. 31, 2010) (noting that, even if the parent exercised significant supervision over the subsidiary, "there still must be allegations that [the parent] abused the benefits of the corporate form in order to improperly insulate itself from violations of the FCA . . . committed by its subsidiaries" and that because the plaintiff failed to detail such allegations, "its amended complaint remains deficient to meet the requirements of Rules 8 and 9(b) on the alter ego theory"); *United States v. Exec. Health Res., Inc.*, 196 F. Supp. 3d 477, 515 (E.D. Pa. 2016) ("A party seeking to pierce the corporate veil must essentially demonstrate that in all aspects of the business, the two corporations actually functioned as a single entity and should be treated as such.") (quotation omitted).

C. DISMISSAL FOR LACK OF JURISDICTION UNDER RULE 12(b)(1)

Relators' FCA claims are subject to the public disclosure bar which mandates dismissal for lack of subject matter jurisdiction if the claims are based on a "public disclosure," unless the relator bringing the claim qualifies as an "original source" of the allegations . *Graham Cnty. Soil and Water Conservation Dist. v. United States ex rel. Wilson*, 559 U.S. 280, 283, 301 (2010) (citing 31 U.S.C. §§ 3729-3733);[13] *see United States ex rel. Ackley v. Int'l Business Machines Corp.*, 76 F. Supp. 2d 654, 658-59 (D. Md. 1999).

[13] In 2010, Congress amended the public disclosure section to delete the reference to jurisdiction. However, the 2010 amendment is not retroactive and does not apply to FCA claims based on conduct prior to the amendment's enactment even if a relator filed a *qui tam* action after the enactment. *See United States ex rel. May v. Purdue Pharma L.P.*, 737 F.3d 908, 918 (4th Cir. 2013), *cert. denied* 135 S. Ct. 2376 (2015). To the extent that the Court considers the 2010 post-

IV. ARGUMENT

A. THE FAC FAILS TO PLEAD FACTS SUFFICIENT TO IGNORE THE CORPORATE SEPARATENESS OF DI AND GLS

DI and GLS have maintained their corporate separateness by respecting the requisite corporate formalities.[14] Relators' allegations do not demonstrate a unity of interest and ownership, fraud or the potential for an inequitable result as required. Thus, the Complaint should be dismissed in its entirety as to DI.

Courts considering FCA claims, apply a two-part test to determine whether veil-piercing is appropriate: "(1) is there such a unity of interest and ownership that the separate personalities of the parent and subsidiary no longer exist; and (2) if the acts are treated as those of the corporation alone, will an inequitable result follow?" *United States ex rel. Hockett v. Columbia/HCA Healthcare Corp.*, 498 F. Supp. 2d 25, 60 (D.D.C. 2007), *reconsideration denied United States ex rel. Staley v. Columbia/HCA Healthcare Corp.*, 587 F. Supp. 2d 757 (W.D. Va. 2008).[15] The first question turns on the "degree to which formalities have been followed to

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amendment version of the statute, Federal Rule of Civil Procedure 12(b)(6) will apply to support dismissal.

[14] In addition to GLS, Relators name as a defendant a purported unincorporated entity called "Global Linguist Solutions" that they claim is a "joint venture" between DI and AECOM. *See* FAC ¶¶ 20-21. This alleged "joint venture" does not exist and, never has existed, and simply calling two separate members of an LLC a "joint venture" does not make them one.

[15] Relators' reliance upon Virginia partnership law is incorrect. FAC ¶¶ 20-21. Because Relators bring their claims under the FCA, and because their government contract claims implicate federal interests, federal law governs their veil piercing allegation against DI. *Hockett*, 498 F. Supp. 2d at 60. *See, e.g., United States ex rel. Kneepkins v. Gambro Healthcare*, Inc., 115 F. Supp. 2d 35, 39 (D. Mass. 2000); *see also United States v. Kimbell Foods, Inc.*, 440 U.S. 715, 726 (1979). Further, Relators fail to state a claim because GLS is a Delaware-registered LLC, a legally separate entity. *See* FAC ¶ 20. In any event, state law governing LLCs is fully consistent with federal law on these issues. The Delaware Limited Liability Company Act provides that "no member or manager of a limited liability company shall be obligated personally for any . . . liability of the limited liability company solely by reason of being a member or acting as a manager of the limited liability company." Del. Code Ann. Tit. 6, § 18-303. Similarly, Maryland, the state where this action was brought, and Virginia, where GLS is headquartered,

maintain a separate corporate identity," and the second question involves "the basic issue of fairness under the facts." *Id.* In applying the second part, Courts have also considered whether "the principals conducted their affairs with a requisite degree of 'fraudulent intent.'" *Kneepkins*, 115 F. Supp. 2d at 39.[16]

1. The Complaint Fails to Establish That The Separate Corporate Identities Of DI and GLS Should Be Ignored

In determining whether corporate separateness should be ignored, courts applying the first part of the test look to whether there is a "unity of interest and ownership [between the separate corporate entities] such that the separate personalities of the parent and subsidiary no longer exist[.]" *Hockett*, 498 F. Supp. 2d at 60. Here, DI and GLS are LLCs that fully maintain the separate corporate activities and formalities consistent with their separate identities. GLS was organized as a Delaware LLC on July 20, 2006.[17] GLS was registered to do business as a foreign LLC in Virginia on January 24, 2008 and appointed CT Corporation as its registered agent.[18] As this Court may take judicial notice, GLS remains in good standing in Delaware and

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also both hold that members of a limited liability company are not liable for the conduct of the company of which they are members. *See* Md. Code Ann., Corps. & Ass'ns § 4A-301; Va. Code Ann. § 13.1-1019.

[16] Limited liability is a bedrock principle of corporate law, and disregarding the corporate form is the exception to this well-settled rule. *See, e.g.*, *Dole Food Co. v. Patrickson*, 538 U.S. 468, 475 (2003) ("The doctrine of piercing the corporate veil . . . is the rare exception, applied in the case of fraud or certain other exceptional circumstances. . . ."); *see also* 1 Fletcher Cyc. of the Law of Corps. § 43 (2018) ("As a general rule, two separate corporations are regarded as distinct legal entities even if the stock of one is owned wholly or partly by the other. Thus, generally, absent fraud or bad faith, a corporation will not be held liable for the acts of its subsidiaries or other affiliated corporations."). Investment alone, in one corporation by another, does not create an alter ego relationship between the two. *Vitol, S.A. v. Primerose Shipping Co.*, 708 F.3d 527, 545-47 (4th Cir. 2013).

[17] *See File Number 4193322: Global Linguist Solutions, LLC*, https://icis.corp.delaware.gov/Ecorp/EntitySearch/NameSearch.aspx (follow file number search or entity name search) (last visited Feb. 13, 2019).

[18] *See Global Linguist Solutions, Entity Details*, https://sccefile.scc.virginia.gov/Business/T036720 (last visited Feb. 13, 2019).

is still in business offering translation services unrelated to the Relators or the contracts that they reference in this suit. In fact, Relators acknowledge in their Complaint that GLS has its own personnel. FAC ¶¶ 32, 41, 44. Each of these points support the fact that GLS observes the requisite corporate formalities and maintains its status as an LLC independent of DI.

Relators' attempt to plead a contrary "unity of interest" between DI and GLS by alleging that DI identifies GLS as a subsidiary in its public reporting is misplaced. Such periodic disclosures are required by the Securities and Exchange Commission ("SEC"). *Id.* ¶¶ 29-30.[19] Also permitted by law are consolidated financial statements (*Id.* ¶ 31),[20] a Sarbanes-Oxley Act ("SOX") compliance audit (*Id.* ¶ 35), and a report to investors (*Id.* ¶ 47). Observing such legal requirements is not a proper basis for disregarding corporate separateness.

Relators also allege that DI shares resources with GLS, including by funding GLS's operating capital (*Id.* ¶ 33) and that the companies are sharing a business address (*Id.* ¶ 36). Finally, Relators allege that DI exercised management control over GLS, including by appointing GLS managers, by naming DI personnel responsible for GLS's daily management (*Id.* ¶¶ 32, 34, 45, and 48) and by providing administrative and information technology support for GLS employees (*Id.* ¶¶ 37-43, 46, and 49). Even accepting these allegations as true, they do not constitute a basis for disregarding the corporate separateness of DI and GLS. On the

[19] *See, e.g.*, Item 101 of Regulation S-K (17 C.F.R. § 229.101) of the U.S. Securities Act of 1933 ("Securities Act") as amended ("Securities Act"), Item 301 of Regulation S-K (17 C.F.R. § 229.301) of the Securities Act, and Regulation S-X (17 C.F.R. Part 210) of the Securities Act.

[20] The mere fact that a parent issued consolidated financial reports with its subsidiary has been previously held as insufficient reason to pierce the corporate veil in this District. *Newman v. Motorola, Inc.*, 125 F. Supp. 2d 717, 723 (D. Md. 2000) (noting parent's submission of a consolidated financial statement and consolidated tax returns insufficient to warrant piercing the corporate veil); *In re Am. Honda Motor Co., Inc. Dealerships Relations Litig.*, 941 F. Supp. 528, 551-52 (D. Md. 1996) (applying federal common law and holding the entities' use of consolidated financial statements insufficient to justify piercing the corporate veil).

contrary, one expects the owner of a "real" business to make sure the business it owns is adequately capitalized, well managed and supported, and has the administrative and technical resources to properly operate. "[C]ourts routinely refuse to pierce the corporate veil based on allegations limited to the existence of shared office space or overlapping management, allegations that one company is the wholly-owned subsidiary of another, or that companies are to be 'considered as a whole.'" *Universal Health Servs.*, 2010 WL 4323082, at *4; *see also Vitol*, 708 F.3d at 547. Similarly, Relators allege "on information and belief" that several of GLS's managers were DI employees.[21] FAC ¶ 48. However, Relators themselves acknowledge that the employees represented themselves as employees of GLS, not DI. *Id.* ¶¶ 45, 48.

Moreover, as Relators also acknowledge, DI was not GLS's sole shareholder, but shared ownership of GLS with AECOM, a corporate entity completely separate and independent of DI. The fact that GLS is owned by two separate corporate entities is inconsistent with DI treating GLS as an alter ego. *Id.* ¶¶ 19-20. Importantly, the Complaint does not allege that DI ever possessed a greater degree of management authority over GLS than permitted by GLS's operating agreement between DI and AECOM. To the contrary, Relators also named AECOM as a defendant and are attempting to hold AECOM liable for GLS's alleged misconduct. *Id.* ¶ 21.

Relators fail to meet the heightened pleading requirements of Rule 9(b) in alleging that either parent corporation ever ignored the corporate separateness of GLS. Moreover, courts have consistently held that a low number of shareholders is not a reason to pierce the corporate veil. *Dewitt Truck Brokers, Inc. v. W. Ray Flemming Fruit Co.*, 540 F.2d 681, 685 (4th Cir. 1976).

[21] As noted throughout this memorandum, Relators' allegations based on information and belief are inadequate but especially where, as here, Rule 9(b)'s particularity standard governs the veil-piercing allegations.

This is particularly true where, as here, the two LLC members are separate and distinct corporate entities.

2. The Complaint Fails to Adequately Allege that DI and GLS Acted with Fraudulent Intent and an Inequitable Result Would Follow By Not Piercing the Corporate Veil

Relators also fail to meet the second part of the test by not pleading any facts that DI and GLS have conducted their affairs with "fraudulent intent," or that not piercing the corporate veil would lead to an "inequitable result." Relators do not allege that GLS is undercapitalized, underinsured or was or is known by DI to be incapable of meeting its commercial obligations. There are simply no allegations in the Complaint to support a claim that DI utilized its authority as a part owner of GLS to deprive GLS of its ability to function as a standalone company.

Permitting the corporate formalities to stand would also not create an "inequitable result," fundamental unfairness or injustice. *See Exec. Health Res.*, 196 F. Supp. 3d at 517 (noting relator failed to allege facts that an injustice would result if the subsidiary were held directly and solely responsible for its alleged fraud). "Ultimately what the [plaintiff's] Amended Complaint fails to capture is that a well-pled veil-piercing action alleges not only that an entity in the corporate structure has committed a fraud for which the parent should be vicariously liable, but also that parental control is utilized to perpetuate a fraud or other wrong." *Universal Health Servs*., 2010 WL 4323082, *4 (quotation omitted).

Simply put, it is not illegal or improper for DI to form subsidiaries, and then to operate these subsidiaries as separate entities. *See Kneepkins,* 115 F. Supp. 2d at 41. Having only one or two shareholders of an LLC also does not justify piercing the corporate veil. *United States ex rel. Siewick v. Jamieson Sci. & Eng.'g, Inc.,* 191 F. Supp. 2d 17, 21 (D.D.C. 2002), *aff'd* 322 F.3d 738 (D.C. Cir. 2003). Numerous federal courts have rejected prior attempts by relators to pierce the corporate veil in cases involving alleged violations of the FCA. *See, e.g., Hockett*, 498

F. Supp. 2d at 61; *United States ex rel. Raffington v. Bon Secours Health Sys., Inc.*, 285 F. Supp. 3d 759, 769-70 (S.D.N.Y. 2018); *Kneepkins*, 115 F. Supp. 2d at 40; *United States ex rel. Fent v. L-3 Commc'ns Aero Tech LLC*, No. 05-CV-0265, 2007 WL 3485395, at *4 (N.D. Okla. Nov. 8, 2007); *see also United States ex rel. Pfeifer v. Ela Medical, Inc.*, No. 07-cv-01460-WDM-MEH, 2010 WL 1380167, at *14 (D. Colo. Mar. 31, 2010); *United States ex rel. Tillson v. Lockheed Martin Energy Sys., Inc.*, No. Civ. A. 5:00CV-39-M, 2004 WL 2403114, at *33 (W.D. Ky. Sept. 30, 2004); *Siewick*, 191 F. Supp. 2d at 21-22.

In light of this authority, the principles of limited liability, and Relators' failure to allege facts sufficient to meet the requirements of the two-part test to pierce the corporate veil, all counts of the FAC should be dismissed with prejudice as to DI.

B. THE FCA CLAIMS MUST ALSO BE DISMISSED UNDER THE PUBLIC DISCLOSURE BAR

The FCA contains a Public Disclosure Bar, which prohibits a relator from bringing a *qui tam* lawsuit in which the allegations of fraud were previously publicly disclosed, unless the relator (though not the author of the public disclosures) is nevertheless an "original source" of the allegations.[22] The Public Disclosure Bar is statutorily mandated to prevent "parasitic

[22] "[W]hen subject matter jurisdiction is challenged under the public disclosure bar, a court must engage in a three-pronged analysis to determine (1) if there was a public disclosure, (2) if the relator's allegations were based upon the public disclosure, and, if so, (3) whether the relator is nonetheless entitled to original source status as an individual who has direct and independent knowledge of the information on which the allegations are based." *United States ex rel. Black v. Health & Hosp. Corp. of Marion Cnty.*, 494 F. App'x 285, 293 (4th Cir. 2012) (quotations omitted). This analysis places a twofold burden on relators in FCA actions. Once a defendant challenges subject matter jurisdiction, a relator first bears the burden of proving that the allegations underpinning Relator's FCA claims are not "based upon" public disclosures. *See id.* at 292. If the relator fails to carry this burden, the relator then bears the separate and distinct burden of proving that relator qualifies as an "original source," which requires a showing that the relator "has direct and independent knowledge of the information on which the allegations are based" and that the relator has voluntarily provided the information to the Government. 31

lawsuits" that improperly seek access to *qui tam* recoveries. *See United States ex rel. Beauchamp v. Academi Training Ctr.*, 816 F.3d 37, 43 (4th Cir. 2016).

Under the Public Disclosure Bar,

> No court shall have jurisdiction over an action under this section ***based upon*** the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government Accounting Office report, hearing, audit, or investigation, or from the news media, unless the action is brought by the Attorney General or ***the person bringing the action is an original source of the information.***

31 U.S.C. §3730(e)(4)(A) (2006) (amended 2010) (emphasis added). [23]

The FCA claims therefore must also be dismissed pursuant to the FCA public disclosure bar as Relators are not their original sources.

1. The FCA Allegations Are Based on Prior Public Disclosures to the Commission and in the Media

Relators allege no facts showing that they were in a position to observe the award of either Contract 1, Contract 2, or any of the subcontracts. *See United States ex rel. Oliver v. Philip Morris USA Inc.*, 826 F.3d 466, 477 (D.D.C. 2016) ("[I]t is not Oliver's investigation but his lack of firsthand knowledge prompting his investigation that precludes his original source status."). And, as detailed above, *supra*, pages 5-6, the small business subcontracting concerns

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U.S.C. § 3730(e)(4)(B) (2006) (amended 2010); *see also Rockwell Int'l Corp. v. United States*, 549 U.S. 457, 471-72 (2007).

[23] The Public Disclosure Bar was amended in March 2010. 31 U.S.C. §3730(e)(4)(A) (2012); Patient Protection and Affordable Care Act, Pub. L. No. 111-48, 124 Stat. 119, 901 (2010). These amendments rejected the Fourth Circuit's reading of "based upon," in favor of a public disclosure bar where the allegations are "substantially the same." *Cf.* 31 U.S.C. §3730(e)(4)(A) (2012). The 2010 amendments also removed the subject matter jurisdictional bar, instead making prior public disclosure a grounds for Rule 12(b)(6) dismissal for failure to state a claim. *See May*, 737 F.3d at 918. The post-amendment Public Disclosure Bar is not to be applied retroactively, meaning that conduct that occurred prior to its 2010 adoption is evaluated pursuant to the pre-amendment Public Disclosure Bar. *Id.*. The allegations here straddle the 2010 amendments, but it does not matter, because as discussed *infra*, page 19, Relators' claims are properly barred under both the Fourth Circuit's pre-amendment "actually derived from" standard and the post-amendment "substantially the same allegations" standard.

raised in the Complaint were previously raised at the 2009 War Commission hearings and in the media reports of the Shee Atika litigation without any apparent input from or involvement by the Relators. Relators claim that but for defendants' misrepresentations concerning the small business contractor issues, Contract 2 would not have been awarded to GLS. FAC ¶ 9. Yet, as the 2009 Commission hearings demonstrated, United States government officials, while critical of certain aspects of the performance of GLS, at all relevant times, knew about these small business contract concerns, and stated that GLS would not be replaced. *See, e.g.*, Associated Press, *Feds Question Iraq Interpreter Contract*, NBC News (Aug. 12, 2009, 7:33 PM), http://www.nbcnews.com/id/32393792/ns/world_news-mideast_n_africa/t/feds-question-iraq-interpreter-contract/%23.XD0QqWwUkVB#.XFvAnWwUk2w.

Similarly, the Commission testimony of GLS President and United States government representatives, including the government auditor to the Commission, underscored the United States' awareness of GLS's use of subcontractors, and the alleged cost issues involving these subcontractors. *See* Hearing Transcript, at 8-9. Relators own Complaint acknowledges that the Commission was aware in 2009 of GLS's relationship with its subcontractors (FAC ¶ 167), and of the possibility that the subcontractors were too small to administer their portion of the larger contract. *Id.* ¶ 171. In addition, the Complaint also acknowledges that the Commission questioned why GLS made payments to its subcontractors, noting that twelve subcontractors allegedly did not hire, manage, or interact with the linguists. *Id.* ¶ 176. Finally, as detailed above, *supra*, pages 5-8, widely circulated news media reports discussed the U.S.' investigation of the high cost of GLS's contracts and Relators' experiences as linguists.[24]

[24] *See, e.g.*, Robert Brodsky, *Panel to Probe Subcontracting Systems, Subcontracting Arrangements*, Nextgov (Aug. 11, 2009), https://www.nextgov.com/cio-briefing/2009/08/panel-

The Complaint fails to plead that Relators prompted the 2009 Commission on Wartime Contracting disclosures, which mirror the GLS subcontracting issues at the heart of the FCA claims in this lawsuit. Thus, either under the pre-2010 amendment standard that the Public Disclosure bar precludes allegations "actually derived from" a prior public disclosure,[25] or the post-2010 amendment standard that precludes "substantially similar" allegations, Relators' FCA claims here should be dismissed because they are based on the same subcontractor issues first raised in 2009 before the Commission without any involvement by the Relators.

To rebut the fatal impact of the 2009 Commission hearings on their FCA claims Relators assert, without providing any facts, that GLS's testimony before the Commission was false. *See, e.g.*, FAC ¶ 173. However, such alleged falsity is a red herring.

First, as detailed above, the Commission heard from many more witnesses than just GLS at the hearings. All raised the same issues and concerns that are at the heart of the allegations in the Complaint, irrespective of GLS's testimony on those issues.

Finally, as detailed above, *supra*, pages 6-8, widespread prior public media reports also reflect the assertions of the Complaint and thus support dismissal of the FCA claims under the public disclosure bar.

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to-probe-contractor-systems-subcontracting-arrangements/44504/; Richard Lardner, *Major Problems Cited in Iraq Interpreter Contract*, Newsday (Aug. 12, 2009, 9:05 PM), https://www.newsday.com/news/nation/major-problems-cited-in-iraq-interpreter-contract-1.1365630.

[25] It is apparent that Relators allegations of fraud are "based upon" (*i.e.*, derived from) such public disclosures under the pre-2010 amendment public disclosure bar language. *See* 31 U.S.C. §3730(e)(4)(A) (2006) (amended 2010). Similarly, pursuant to the post-2010 amendment public disclosure bar language, they are "substantially the same allegations [and] transactions as alleged in the action." *See* 31 U.S.C. §3730(e)(4)(A) (2012). Under either standard, they are properly barred and should be dismissed.

2. Relators Do Not Qualify as Original Sources of the Information

Relators allege in conclusory language that they are the original source of all public disclosures, without the requisite specific pleading as to how they meet this requirement. *See, e.g.*, FAC ¶¶ 6, 58. Relators thus "understood that the public disclosure bar presented an obstacle [they] could not overcome, hence it was necessary to assert [their] standing directly based on the original source exception." *Ackley*, 76 F. Supp. 2d at 665 (Messitte, J.).

However, Relators fail to plead any specific information about how they acquired the knowledge of their allegations directly, or independently from the above prior public sources, or how Relators volunteered that information to the United States before filing suit. *See id.* at 656, 664 (dismissing FCA claim alleging fraudulent billing where Relator was not involved in the billing and offered no independent source of information about the alleged fraudulent scheme). Relators allege no specific knowledge about: the procurement process by which GLS gained Contracts 1 and 2; the contracting relationships with the subcontractors; the billings under Contracts 1 or 2 or the subcontracts; or the alleged false claims and statements.[26]

A lack of knowledge about the actual claims process is fatal to a relator's attempts to allege an FCA case against a defendant. *See United States ex rel. Ahumada v. NISH*, 756 F.3d 268, 276, 278 (4th Cir. 2014) (noting that a relator must plead specific facts and not just conclusions in order to meet the standard for "direct and independent" knowledge); *see also United States ex rel. Citynet, LLC v. Frontier W. Virginia Inc.*, Civil Action No. 2:14-15947, 2018 WL 1582527, at *21 (S.D. W. Va. Mar. 30, 2018), *appeal filed* No. 18-1575 (4th Cir. May 22, 2018) (dismissing portions of two counts pursuant to the post-amendment version of the

[26] Relators instead removed from the FAC the allegation in their original Complaint that they personally witnessed the presentment of "false claims against the U.S. giving rise to this suit." *Cf.* Compl., ¶ 6 *with* FAC ¶ 6. *See also* ECF No. 9-1, ¶ 6.

original source test because public disclosures identified the fraud, and the court "cannot say that [the relator] has materially contributed to these public disclosures"). The Complaint lacks specific allegations of Relators' knowledge of allegedly false claims, billings, or reverse false claims.

Both the pre- and post-amendment Public Disclosure Bar also ***require*** a relator to have voluntarily provided the U.S. with any information a relator has about a false claim to the government ***before*** filing suit. 31 U.S.C. §3730(e)(4)(B) (2006); 31 U.S.C. §3730(e)(4)(B)(i) and (ii) (2012). While Relators state that they "provided evidence of such misconduct to the U.S.," (FAC ¶ 6), they do not allege that they voluntarily provided such information to the government prior to filing suit. "However much some practitioners may choose to ignore it, the requirement of voluntary disclosure before filing suit remains part of the statute," and, indeed, under the pre-amendment version, is "nothing less than a jurisdictional pre-requisite." *Ackley*, 76 F. Supp. 2d at 668 (emphasis added). ("[I]t seems inescapably clear that the point at which the pre-filing disclosure has to be made is, at a minimum, one sufficiently in advance of the time of filing to permit the Government to commence its analysis of the proposed litigation.").

In sum, Relators have failed to show that their FCA allegations are not derived from and based upon the 2009 Commission hearings and numerous other public disclosures in the media that predated this suit. Nor have Relators adequately pled their own source of direct and independent information to qualify as the original source of these public disclosures and the Complaint's allegations. Finally, Relators have not shown that they voluntarily provided any information supporting their allegations to the United States prior to filing this suit. For all of these reasons, the FCA claims are barred by the public disclosure bar, and should be dismissed with prejudice.

C. RELATORS FAIL TO STATE FCA CLAIMS WITH PARTICULARITY

1. Relators Failed to Meet the Heightened Pleading Standards of Rule 9(b)

The Complaint largely relies upon information and belief pleading which does not meet the heightened pleading requirements of Fed. R. Civ. P. 9(b). Information and belief allegations are randomly interspersed with other allegations throughout the FAC.[27] Similarly, the Complaint improperly groups defendants and Relators together without the requisite detail. *See, e.g.*, FAC ¶¶ 22, 182.

Moreover, despite its length, the Complaint lacks any allegations regarding the submission of specific false claims or invoices to the government or false statements in support of those claims. Rule 9(b) requires that detailed, specific and actual accounts of individual false claim submissions must be pled, rather than a generalized description of an alleged fraudulent scheme. "[A]n [FCA] complaint is insufficient if it fails to allege specific claims submitted to the government and the dates on which those claims were submitted." *United States v. Kernan Hosp.*, 880 F. Supp. 2d 676, 683 (D. Md. 2012) (quotation omitted). The "what requirement" mandates that "a plaintiff . . . show a link between the allegedly wrongful conduct and a claim for payment actually submitted to the government." *Id.*

2. Relators Have Also Not Adequately Alleged the Elements of an FCA Claim

Relators allege three Counts under the FCA: presentation of false claims pursuant to 31 U.S.C. § 3729(a)(1)(A); presentation of false statements under 31 U.S.C. § 3729(a)(1)(B); and reverse false claims based upon 31 U.S.C. § 3729(a)(1)(G). FAC ¶¶ 488-547. An FCA violation

[27] These allegations include: the award of the contracts (FAC ¶¶ 2, 4, 91); the services under the contract (*id.* ¶ 4); key allegations tied to the alter ego claims, *i.e.*, location and personnel (*id.* ¶¶ 20, 36, 48); subcontractor performance and the teaming agreement (*id.* ¶¶ 50, 51, 52, 53, 54, 90, 117, 119, 175), and immigration status and related issues involving Al Shora (*id.* ¶¶ 125, 132, 133, 135, 138, 139, 185, 186, 187, 241, 274, 310, 426).

must include four elements: falsity, causation, knowledge, and materiality." *United States ex rel. Petratos v. Genentech Inc.*, 855 F.3d 481, 487 (3d Cir. 2017). Relators failed to allege facts sufficient to support each of these elements.

a. DI Did Not Cause the Submission of False Claims or False Statements

As discussed in part A, *supra*, pages 11-16, DI is not liable for the actions of its separate and independent subsidiary, GLS. *See Executive Health Resources*, 196 F. Supp. 3d at 517; *Universal Health Servs.*, 2010 WL 4323082, at *4 ("[K]nowledge of FCA violations" by a parent and "failure to investigate or solve the [subsidiary's] false billing practices [does] not serve to impose vicarious liability on the parent company without piercing the corporate veil."). Moreover, without having played a role in the submission of any false claims, a parent company cannot also be held liable for the acts of its subsidiary. *See id.* at *2. *See also United States v. President & Fellows of Harvard Coll.*, 323 F. Supp. 2d 151, 186-87 ("To 'cause' the presentation of false claims under the FCA, some degree of participation in the claims process is required."). Here, Relators have not alleged DI played any role in GLS's submission of claims, false or not, to the United States. Therefore, Relators have failed to plead causation, one of the key elements of a FCA action, against DI.

b. DI Did Not Knowingly Submit False Claims or Make False Statements

The Complaint fails to allege that DI submitted false claims or that DI knew that GLS had submitted a false claim. FAC ¶ 21. The Complaint makes no allegations concerning DI's alleged scienter, other than to improperly "impute" knowledge to DI under Virginia law regarding partnerships and agency. *Id.* A well-plead FCA claim must allege scienter, which is "the knowing presentation of what is known to be false." *United States ex rel. Joslin v. Cmty. Home Health of Md., Inc.*, 984 F. Supp. 374, 383 (D. Md. 1997). The FCA "defines 'knowingly'

as having actual knowledge of the information, acting in deliberate ignorance of the truth or falsity of the information, or acting in reckless disregard of the information." *Id.* (citing 31 U.S.C. § 3729(b)). "Although intent may be alleged generally, the relator must still plead specific facts supporting an inference of fraud." *United States ex rel. Ahumada*, 2013 WL 2322836, at *4; *accord United States ex rel. DeCesare v. Am. In Home Nursing*, 757 F. Supp. 2d 573, 583 (E.D. Va. 2010).

c. The Government Knowledge Inference Applies

Relators' assertion that the government would not have entered into Contract 2 if it had been aware of the issues alleged involving the subcontracting process is belied by the Complaint's own averments regarding the Commission. As detailed *supra*, pages 5-6, the Complaint acknowledges that the Commission discussed "fraud, waste, abuse and mismanagement of wartime government contracts" (FAC ¶ 164), including on "linguist support services provided by GLS" *Id.* ¶ 165. The Commissioners asked questions on a variety of topics, such as GLS's leasing of linguists from its subcontractors (*Id.* ¶ 167), the function of the subcontractors (*Id.* ¶ 169), the capabilities of the subcontractors (*Id.* ¶ 171), and the allocation of labor and costs (*Id.* ¶ 174) and payroll responsibilities (*Id.* ¶ 176). GLS's President, along with government employees from INSCOM who were familiar with GLS's billing practices and history, provided testimony to the Commission and answered the Commissioners' questions. *Id.* ¶ 165; *see also id.* ¶¶ 167, 169, 171-72, 174, and 176.

"[I]f the government knows and approves of the particulars of a claim for payment before that claim is presented, the presenter cannot be said to have knowingly presented a fraudulent or false claim. In such a case, the government's knowledge effectively negates the fraud or falsity required by the FCA[.]" *United States ex rel. Becker v. Westinghouse Savannah River Co.*, 305 F.3d 284, 289 (4th Cir. 2002) (adopting the government knowledge inference). In light of the

Commissioners' questions, INSCOM's questions and GLS's testimony during the Commission hearings, the United States was aware of the alleged subcontracting issues in allowing GLS to continue its performance under Contract 1, and in entering into Contract 2. "The government knew what it wanted, and it got what it paid for." *United States ex rel. Durcholz v. FKW, Inc.*, 189 F.3d 542, 545 (7th Cir. 1999).

d. Relators Did Not Materially Aid the Government

"[A] misrepresentation about compliance with a statutory, regulatory, or contractual requirement must be material to the Government's payment decision in order to be actionable under the False Claims Act." *Universal Health Servs., Inc. v. United States ex rel. Escobar*, 136 S. Ct. 1989, 2001 (2016); *United States ex rel. Potter v. CASA de Md.*, Civil Action No. PX-16-0475, 2018 WL 1183659, at *6 (D. Md. Mar. 6, 2018). This materiality requirement is strictly enforced. *See United States v. Triple Canopy, Inc.*, 857 F.3d 174, 176-77 (4th Cir. 2017). Here, given the prior public disclosures in the Commission hearings, *supra* pages 5-6, the government was already sufficiently aware of the subcontracting issues alleged by Relators in the Complaint. Relators have thus failed to adequately plead the materiality of their allegations under the FCA. *Petratos*, 855 F.3d at 489.

D. THE FCA STATUTE OF LIMITATIONS LIMITS RELATORS' CLAIMS

A relator may not bring an FCA action "more than 6 years after the date on which the [alleged] violation of section 3729 [was] committed." 31 U.S.C. § 3731(b)(1); *see United States ex rel. Sanders v. N. Am. Bus Indus. Inc.*, 546 F.3d 288, 293, 296 (4th Cir. 2008).

Relators filed their original complaint on June 19, 2015. Thus, the FCA statute of limitations bars claims relating to alleged violations committed on or before June 19, 2009, including Relators' claims as to Contract 1. Relators wrongly assert that they are allowed to extend this statutory bar based upon "Defendants' concealment of their unlawful actions" and

based upon equitable estoppel. FAC ¶ 57. The Complaint does not contain allegations to support such a broad, conclusory statement. *See* 31 U.S.C. § 3731(b)(1).

E. RELATORS HAVE ALSO FAILED TO ADEQUATELY PLEAD A TVPRA CLAIM UNDER RULE 12(b)(6)

Additionally, Relators have not adequately stated a claim in Count IV under the TVPRA. Congress enacted that statute to prohibit "slavery and involuntary servitude, by criminalizing the act of coercing persons into providing labor and services against their will and by providing a civil remedy to the victims of such actions." *Muchira v. Al-Rawaf*, 850 F.3d 605, 625 (4th Cir. 2017). The Relators' TVPRA claim primarily relies on 18 U.S.C. § 1589, titled "Forced Labor," which makes it a crime to knowingly provide or obtain a person's labor or services by means of:

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

18 U.S.C. § 1589(a). Relators, however, entered into agreements to serve as linguists that contained broad disclosures of the risks of their potential assignments, including, work on military bases near a war zone, undercutting their claims based on alleged Forced Labor. *See* GLS LLC's Memo. in Support of Mot. to Dismiss and Mot. to Strike, ECF No. 23, *Zinnekah*, 43-295.

Count IV of the Complaint also fails because Relators have not pled sufficient facts that would allow a factfinder to determine that such Forced Labor existed. As the statute makes clear, there must be a nexus or connection between the alleged victims' provision of labor and services and at least one of the described means, which is a type of force. *United States v. Marcus*, 487 F. Supp. 2d 289, 310 (E.D.N.Y. 2007), *reversed on other grounds* 628 F.3d 36 (2d

Cir. 2010). Such a nexus or connection may exist, for instance, when a person provides labor or services out of fear of injury because the employer had injured the person in the past, *United States v. Callahan*, 801 F.3d 606, 620 (6th Cir. 2015), or when the employer threatens a person with deportation "should she fail to perform the work demanded of her." *Kiwanuka v. Bakilana*, 844 F. Supp. 2d 107, 115 (D.D.C. 2012).

Here, however, Relators have not alleged a nexus between any of the four types of force and their linguist services. Rather than stating a claim that Relators provided their linguist services due to some force that GLS exerted on them, the Relators claim that they "did not want to work under the inhumane and arduous conditions to which they were subjected by GLS, but reasonably believed that they had no choice due to GLS's absolute control over their lives . . . ." FAC ¶ 592. The FAC then describes five examples of the alleged control that GLS exerted: (1) GLS confiscated their passports, which prevented them from moving about the country; (2) GLS denied them medical care; (3) GLS refused to allow one Relator to quit; (4) GLS management told a Relator that the linguists were "slaves"; and (5) GLS refused to allow one Relator to leave Kuwait even after she had been fired. *Id.*

Neither "control" nor the five examples support the TVPRA claim. Three of the examples have no connection to the provision of their linguist services. In particular, the FAC provides no facts to explain how or why Relators believed GLS forced them into providing their linguist services through the alleged confiscation of their passports, the denial of medical care, or the statement that they were "slaves." Thus, these examples do not provide the basis for a TVPRA Forced Labor claim. The other two examples state only conclusory statements that they are connected to the linguist services but provide no facts to connect GLS's alleged actions to the Relators' provision of linguist services.

Indeed, the FAC does not provide any facts to explain how "GLS refused to allow one Relator to quit" or how that refusal resulted in forced labor. The allegation is apparently based on paragraph 450 of the FAC, where Relators allege that an unnamed non-resident visa holder resigned and "demanded to go home" but that the "President of GLS . . . refused his request and told him that only Resident Visa holders would be allowed to depart Kuwait." This factual allegation does not establish that GLS forced this person to continue providing his linguist services after he resigned or that GLS used his situation to keep the Relators providing their linguist services; thus, it does not allege that there was any forced labor.

Similarly, the FAC does not provide any facts to explain how "GLS refused to allow one Relator to leave Kuwait even after she had been fired" or how that refusal resulted in forced labor. Although the FAC describes a situation where GLS fired Relator Maryan Mure on January 18, 2013 after she failed a translation proficiency test, *see* FAC ¶ 391, the FAC provides only a summary statement that GLS "refused to return her passport to allow her to exit Kuwait. She was held against her will in Kuwait until April 12, 2013." *Id.* The FAC states neither that GLS forced Ms. Mure to provide linguist services against her will following her termination, nor that GLS used Ms. Mure's four-month delay in leaving the country as a means to force the other Relators to perform their linguist services. Thus, even assuming that Ms. Mure was delayed in leaving the country, the Relators have not stated a claim that it led to her—or anyone else's—forced labor.

The FAC failed to state a claim under the Forced Labor statute because no connection between their services and the alleged actions exist. Relators' true issue, as revealed by the FAC, is that they felt compelled to stay at a military base because they believed that Kuwait authorities would arrest them if they left. *See* FAC ¶¶ 583, 584. The Relators blamed GLS for

this situation. *See* FAC ¶¶ 566-576, 578-582, 586-591. In short, the FAC explains that Relators felt trapped on the military base due to Kuwaiti immigration laws, but it does not state a TVPRA Forced Labor claim. As such, their TVPRA claim under the Forced Labor statute must be dismissed.

Because Relators have not adequately pled that there was forced labor under the TVPRA, they cannot establish claims under the benefits provision of the Forced Labor statute (18 U.S.C. § 1589(b)) or under the prohibition related to interfering with a person's access to his/her immigration documents (18 U.S.C. § 1592). Under the benefits provision of the Forced Labor statute, it is a crime to knowingly benefit "from participation in a venture" that has provided or obtained labor or services by one of the means described above. 18 U.S.C. § 1589(b). Under 18 U.S.C. § 1592, it is a crime to take certain actions with another person's "actual or purported passport or other immigration document" or other governmental document (including removing, confiscating, or possessing it) in violating, attempting to violate or intending to violate other provisions of the TVPRA—including the Forced Labor statute—or where the person has been a victim of a severe form of trafficking. Where there are no victims of severe forms of trafficking (as is the case here), this documentation statute simply acts as a sentence enhancement for violations of the TVPRA. Thus, because Relators have not stated a claim under the Forced Labor statute, which is a prerequisite to a claim under the benefits provision of the statute and to a claim under the documentation statute, they also have not stated a claim under that provision or statute.

V. CONCLUSION

For all of the foregoing reasons, DI respectfully asks that this Court dismiss the Complaint in its entirety with prejudice as to DI.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of February, 2019, that the foregoing was served via the Court's electronic filing system.

By /s/ Jan Paul Miller

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
GREENBELT DIVISION

UNITED STATES OF AMERICA *ex rel.* MOHAMED FADLALLA, *et al*.	)	
Plaintiffs,	)	
v.	)	Case No. 8:15-cv-01806-PX
DYNCORP INTERNATIONAL LLC, *et al*.,	)	
Defendants.	)	

MEMORANDUM IN SUPPORT OF AECOM NATIONAL SECURITY PROGRAMS, INC.'S MOTION TO DISMISS THE FIRST AMENDED COMPLAINT

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Pursuant to Federal Rules of Civil Procedure 9(b), 12(b)(1) and 12(b)(6), AECOM National Security Programs, Inc. ("AECOM"), by counsel, moves this Court to dismiss relators' First Amended Complaint ("FAC") with prejudice and states as follows:

This case arises from a complaint filed in federal court in 2013 by most of these same relators. In that 2013 case, the plaintiffs lodged employment, contract, and tort claims against AECOM, Global Linguist Solutions, LLC ("GLS"), and DynCorp International LLC ("DI"). Recognizing the futility of their claims, the plaintiffs in that case voluntarily dismissed the action within months of filing. Almost two years later, most of those same plaintiffs reappeared in this Court as relators with a sealed complaint alleging False Claims Act ("FCA") and human trafficking violations. This complaint included many of the same allegations first alleged in the 2013 case. To buttress their recycled claims, relators added allegations based on those made in a public Congressional hearing. Relators initially did not name AECOM as a defendant nor did they include any factual allegations implicating AECOM in any alleged violations.

Nearly a year after relators filed their sealed complaint, they submitted the First Amended Complaint, which names AECOM as a defendant. Rather than adding allegations directly implicating AECOM, relators simply assert that AECOM is liable for the actions of GLS. To skirt black letter law regarding corporate liability, relators name as defendants two different "GLS" entities, one a limited liability company and one an alleged unincorporated joint venture. Relators claim that AECOM is liable for the actions of the latter but fail to distinguish the actions of the two purported GLS entities. Predictably, relators fail to state a claim against AECOM:

First, relators do not include any specific allegations against AECOM and implausibly rely on a fictitious defendant to extend liability to AECOM. Moreover, the allegations supporting relators' FCA claims, to the extent they can be deciphered, fail to properly allege any

FCA violation. Relators' allegations are devoid of the particularity required by Rule 9(b), conclusory, or are pled "upon information and belief." Additionally, the violations alleged by relators are more aptly described as "garden variety breaches of contract or regulatory violations," which the Supreme Court has held are not bases for FCA liability.

Second, relators' FCA allegations are foreclosed by the public disclosure bar and the relevant statute of limitations. Relators' allegations are derived from information that was publicly revealed through numerous sources prior to the filing of their *qui tam* action. These sources include a 2009 Congressional hearing by the Commission on Wartime Contracting in Iraq and Afghanistan ("CWC"), an entity that was charged with investigating fraud, waste, and abuse, as well as prior litigation, such as relators' first case filed in 2013. Many of relators' claims are also barred by the FCA's statute of limitations as they relate to activities occurring more than six years before FCA claims were asserted against AECOM.

Third, relators' human trafficking allegations, which are styled as violations of the Trafficking Victims Protection Reauthorization Act ("TVPRA"), also fail to state a claim. As with their FCA claims, relators assert few allegations specifically against AECOM and otherwise fail to plausibly plead any TVPRA violation. This is unsurprising. The TVPRA is a criminal statute primarily aimed at protecting women and children from human trafficking, while relators are sophisticated linguists who signed multiple employment agreements for the express purpose of continuing to work in Kuwait.

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

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

I. FACTUAL BACKGROUND

AECOM is the minority member of Global Linguist Solutions, LLC, a Delaware limited liability company. FAC ¶¶ 19-20. GLS was awarded the Translation and Interpretation Management Services ("TIMS") contract, Contract No. W911W4-08-D-0002 ("Contract 1") in December 2007. *Id.* ¶ 2. Contract 1 required GLS to provide interpretation and translation services in support of the U.S. military's operations in the Middle East. *Id.* ¶ 3. GLS was awarded Contract No. W911W4-11-D-0004 ("Contract 2) in July 2011. *Id.* ¶ 2. Contract 2 also involved the provision of interpretation and translations services. *See id.* ¶ 25 (identifying Contract 2 as the "Defense Language Interpretation Translation Enterprise (DLITE) contract").

Relators worked "as linguists, interpreters and translators under Contract 1 and/or Contract 2 and were based in Kuwait while so employed." FAC ¶ 16. On September 20, 2013, many of these relators filed a putative class action complaint in the U.S. District Court for the Eastern District of Virginia against GLS, DI and AECOM. *See* Complaint (ECF No. 1), *Zinnekah v. Global Linguist Sols., LLC,* Case No. 1:13-cv-01185 (E.D.V.A. filed Sept. 20, 2013).[2] Those individuals alleged, among other things, breach of employment contracts, tortious interference with contract, violations of the Fair Labor Standards Act and violations of Kuwait labor law.[3] *Id.* After the defendants filed motions to dismiss, the plaintiffs returned with an

[1] To the extent applicable, AECOM incorporates by reference the arguments made by GLS and DI in the memoranda in support of their respective motions to dismiss the First Amended Complaint, filed separately today.

[2] The Court may take judicial notice of public court filings without converting the present Motion to a motion for summary judgment. *See James v. Acre Mortg. & Fin., Inc.*, 306 F. Supp. 3d 791, 797 (D. Md. 2018).

[3] In separate litigation filed in Los Angeles Superior Court on October 4, 2013, three linguists brought similar claims against GLS, DI and AECOM. *See Zaklit v. Global Linguist Sols., LLC,*

amended complaint. *See* Amended Complaint (ECF No. 35), *Zinnekah v. Global Linguist Sols.,* Case No. 1:13-cv-01185 (E.D.V.A. filed Nov. 12, 2013). On November 25, 2013, after the *Zinnekah* defendants once again moved to dismiss, the plaintiffs voluntarily dismissed all claims against all defendants. *See* Notice of Voluntary Dismissal of All Claims (ECF No. 45), *Zinnekah v. Global Linguist Sols.*, Case No. 1:13-cv-01185 (E.D.V.A. Nov. 25, 2013).

In June 2015, almost two years after the *Zinnekah* plaintiffs voluntarily dismissed their complaint in the Eastern District of Virginia, relators filed the present action under seal. ECF No. 1. Their complaint alleged violations of the FCA and the TVPRA but did not name AECOM as a defendant. On March 25, 2016, relators filed their First Amended Complaint, which named AECOM as a defendant for the first time. ECF No. 9. On September 24, 2018, the Government elected not to intervene. *See* Notice of Election to Decline Intervention (ECF No. 29) (filed Sept. 24, 2018).

II. LEGAL STANDARD

Under Federal Rule of Civil Procedure 12(b)(6), "to withstand a motion to dismiss, a plaintiff must plead sufficient facts to 'state a claim to relief that is plausible on its face.'" *F.T.C. v. Innovative Mktg., Inc.*, 654 F. Supp. 2d 378, 385 (D. Md. 2009) (*quoting Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line

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Case No. BC523317 (L.A. Super. Ct.). After the case was removed and transferred to the U.S. District Court for the Eastern District of Virginia, defendants filed a motion to dismiss; subsequently, the *Zaklit* plaintiffs voluntarily dismissed all claims against DI and AECOM. *See* Notice of Voluntary Dismissal (ECF No. 73), *Zaklit v. Global Linguist Sols., LLC,* Case No. 1:14-cv-314 (E.D.V.A. April 25, 2014).

between possibility and plausibility of 'entitlement to relief.'" *Id.* (*quoting Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007)). Although the court accepts all well-pleaded facts as true for the purposes of a motion to dismiss, legal conclusions are "are not entitled to the assumption of truth." *Id.* at 679.

In addition to the complaint, "[i]n considering a motion under Rule 12(b)(6), a district court may also consider 'documents incorporated into the complaint by reference, and matters of which a court may take judicial notice.'" *James v. Acre Mortg. & Fin.*, Inc., 306 F. Supp. 3d 791, 799 (D. Md. 2018) (*quoting Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007)); *see Zak v. Chelsea Therapeutics Int'l, Ltd.*, 780 F.3d 597, 607 (4th Cir. 2015) ("[C]ourts are permitted to consider facts and documents subject to judicial notice without converting the motion to dismiss into one for summary judgment.").

III. RELATORS FAIL TO STATE ANY CLAIMS AGAINST AECOM

The First Amended Complaint is devoid of allegations against AECOM. Relators do not allege that AECOM was the prime contractor on Contract 1 or Contract 2. Relators do not allege that AECOM helped prepare or submit any proposals, invoices or certifications regarding those contracts. Relators do not allege that AECOM ever employed them, hired them or managed them. Relators do not allege that AECOM took any actions on Contract 1 or Contract 2.

Although relators fail to assert specific allegations against AECOM, they allege that AECOM is "liable for the misconduct of GLS," because AECOM is essentially a general partner in GLS. *See* FAC ¶ 21. However, GLS is not a general partnership but is a "limited liability company." *Id.* ¶ 19. It is black letter law that members of a limited liability company are not liable for the company's debts, obligations, or liabilities solely by virtue of their status as members. *See* Ribstein and Keatinge on Ltd. Liab. Cos. § 1:5 ("[N]o member or manager is vicariously liable for the obligations of the LLC solely by reason of being a member or

manager."). GLS is a Delaware limited liability company, *see* FAC ¶ 19, and the Delaware Limited Liability Company Act provides that, unless agreed otherwise, "no member or manager of a limited liability company shall be obligated personally for any . . . liability of the limited liability company solely by reason of being a member or acting as a manager of the limited liability company." Del. Code Ann. tit. 6, § 18-303 (2018).[4] As relators have not alleged any direct actions on the part of AECOM and have not alleged that this corporate form should be pierced as to AECOM, the complaint can be dismissed against AECOM on this basis alone.

Relators try to sidestep this clear bar to liability by naming as a defendant a purported unincorporated entity called "Global Linguist Solutions." *See* FAC ¶ 20. Relators allege that this unincorporated entity is a joint venture between DI and AECOM and therefore subjects those entities to liability under "the rules of law governing the rights, duties, and liabilities of joint venturers," which are purportedly "substantially the same as those that govern partnerships." *Id.* ¶ 21. Essentially, relators suggest that the structure of this purported entity permits liability to extend to AECOM regardless of whether AECOM took any direct actions or was an alter ego of that entity. Relators' theory strains credulity.

To support their allegation that a separate legal entity exists, relators list instances when GLS was referred to generally as a "joint venture" rather than specifically as a limited liability company. *See id.* ¶¶ 22-27. That GLS was colloquially referred to as a "joint venture" at times does not mean that a separate legal entity exists.[5] The term "joint venture" is not mutually

[4] Under any other state law that could potentially apply here, the rule is the same. *See, e.g.*, Va. Code Ann. § 13.1-1019 (2018); Md. Code Ann., Corps. & Ass'ns § 4A-30 (LexisNexis 2019).

[5] This is not new information for relators. In the *Zinnekah* case, AECOM advised plaintiffs that GLS was a limited liability company and provided a copy of GLS's certificate of formation. *See* AECOM Mem. in Supp. of Mot. to Dismiss at 4 (ECF No. 30), *Zinnekah v. Global Linguist Sols.*, Case No. 1:13-cv-01185 (E.D.V.A. Oct. 28, 2013). The *Zinnekah* plaintiffs responded by amending their complaint to add Global Linguist Solutions, LLC as a defendant. *Id.*

exclusive with the definition of a limited liability company. *See* Black's Law Dictionary (10th ed. 2014) (defining a "joint venture" as "[a] business undertaking by two or more persons engaged in a single defined project."); *EIG Glob. Energy Partners, LLC v. TCW Asset Mgmt. Co.*, No. CV 12-7173 CAS MANX, 2012 WL 5990113, at *1 (C.D. Cal. Nov. 30, 2012) (discussing "joint venture [that] took the form of an LLC").

In any case, relators do not allege any detail regarding the formation of this unincorporated joint venture or what actions this entity is supposed to have taken. Relators' bare assertion that GLS is an unincorporated joint venture is a conclusory allegation that is not entitled to the "assumption of truth." *Iqbal*, 556 U.S. at 679. Moreover, relators generally refer to both the limited liability company and the purported unincorporated joint venture as "GLS" throughout their First Amended Complaint. *See* FAC ¶ 22 ("Allegations herein against 'GLS' are intended to encompass both entities."). By grouping their allegations against the two purported defendants together, relators reveal the absurdity of their position and further fail to meet the basic pleading requirements of Rule 8(a). *See Bagwell v. Dimon*, No. 1:14-CV-495, 2015 WL 2374614, at *7 (M.D.N.C. May 18, 2015) (finding plaintiff failed to meet Rule 8(a) because "Plaintiff has failed to differentiate the alleged wrongful conduct between Defendants; instead, he repeatedly lumps the Defendants together . . . .").

As such, relators have failed to state any claims against AECOM and the First Amended Complaint should be dismissed in its entirety as to AECOM. This Court need go no further, but, if relators' claims are examined more closely, even more deficiencies are revealed.

IV. RELATORS FAIL TO STATE ANY FCA CLAIMS

Even if relators are able to bootstrap their allegations against GLS onto AECOM, relators still fail to state an FCA claim. Although relators bring FCA claims under 31 U.S.C. § 3729(a)(1)(A) (Count I), § 3729(a)(1)(B) (Count II), and § 3729(a)(1)(G) (Count III), relators'

FCA claims are largely based on a "false certification" theory, *i.e.* that defendants violated the FCA by either expressly or implicitly falsely certifying compliance with statutory, regulatory, or contractual provisions.[6] Relators' "false certification" claims against GLS are related to the following issues: (i) compliance with small business contracting obligations; (ii) compliance with Kuwaiti labor and immigration laws; and (iii) compliance with the TVPRA.[7] FCA claims based on a "false certification" theory require a relator to plead "(1) . . . a false statement or fraudulent course of conduct; (2) made or carried out with the requisite scienter; (3) that was material; and (4) that caused the government to pay out money or to forfeit moneys due (i.e., that involved a 'claim')." *Harrison v. Westinghouse Savannah River Co.*, 176 F.3d 776, 788 (4th Cir.

[6] Whether the alleged false certifications were "express" or "implied" does not make a substantive difference here because, as discussed *infra*, relators have failed to plausibly plead key elements applicable to both theories of liability. *See United States ex rel. Godfrey v. KBR, Inc.*, 360 F. App'x 407, 412 (4th Cir. 2010) (holding that relator's claims, whether express or implied, could not survive where he failed to allege that contract "made payment contingent on compliance with any particular conditions" or "any facts to support his conclusory assertion that KBR in fact certified compliance."); *United States ex rel. Groat v. Boston Heart Diagnostics Corp.*, 255 F. Supp. 3d 13, 23 (D.D.C. 2017) (noting that "[u]nder either an express or implied false certification claim, the plaintiff must plead that the defendant knowingly violated a requirement that the defendant knows is material to the Government's payment decision") (citation and internal quotation marks omitted).

[7] Relators also vaguely allege, with no support, claims under a fraudulent inducement theory. *See, e.g.,* FAC ¶ 530 ("GLS knowingly made these false statements to obtain Contract 1, and to induce the Government to pay amounts it was not obliged to pay under Contract 1."); *id.* ¶ 533 ("Moreover, GLS knowingly made these false statements in order to induce the Government to award it Contract 2."). Fraudulent inducement exists where "the contract or extension of government benefit was obtained originally through false statements or fraudulent conduct." *Harrison v. Westinghouse Savannah River Co.*, 176 F.3d 776, 787 (4th Cir. 1999). Although relators allege, in conclusory fashion, that GLS "did not intend to abide by the terms of the solicitation and Contract 1," *see* FAC ¶ 85, they do not allege any false statement or representation occurring contemporaneously to the solicitation and award of Contract 1. Nor do relators include any more detail in their allegations related to Contract 2. *See id.* ¶ 534 ("Had the U.S. been aware of the material false statements and certifications, by law it could not have awarded Contract 1 or Contract 2 to GLS"). Thus, these fraudulent inducement claims should be dismissed because relators fail to plead them with particularity.

1999). Relators' FCA claims should be dismissed as they fail to plead with particularity and otherwise fail to state a claim.

A. Relators fail to plead with particularity.

As claims under the FCA "sound in fraud, plaintiffs must satisfy the heightened pleading requirements of Federal Rule of Civil Procedure Rule 9(b)." *United States ex rel. Szymoniak v. Am. Home Mortg. Servicing, Inc*, 679 F. App'x 299, 301 (4th Cir. 2017). Rule 9(b) provides that, "[i]n alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake." Fed. R. Civ. P. 9(b). "The 'circumstances' required to be pled with particularity under Rule 9(b) are 'the time, place, and contents of the false representations, as well as the identity of the person making the misrepresentation and what he obtained thereby.'" *United States ex rel. Brooks v. Lockheed Martin Corp.*, 423 F. Supp. 2d 522, 526 (D. Md. 2006) (*quoting Harrison v. Westinghouse Savannah River Co.*, 176 F.3d 776, 784 (4th Cir. 1999)). In other words, relators must plead the "who, what, when, where and how" of the alleged fraudulent scheme to satisfy Rule 9(b). *United States. ex rel. Elms v. Accenture LLP*, 341 F. App'x 869, 873 (4th Cir. 2009) (quotation marks omitted).

Relators' FCA claims lack the particularity required by Rule 9(b). AECOM is only mentioned in ten of the nearly 600 paragraphs included in the First Amended Complaint and most of those ten paragraphs primarily allege basic entity information; none describe actions that form the basis of an FCA claim. Relators' failure to name AECOM in their original complaint merely emphasizes that AECOM is far-removed from the alleged events and wrongly included in this case. Relators' theory of liability regarding AECOM is also insufficiently pled as they do not provide any details about the formation, existence, operation or actions of the purported unincorporated joint venture. Even assuming relators adequately pled the existence of an unincorporated joint venture, relators fail to plead with particularity the actions of that entity.

See FAC ¶ 21. Resorting to block allegations against "GLS" is insufficient as an "undifferentiated assertion of fraud against multiple defendants is prohibited by Rule 9(b). . . . Rule 9(b) requires a plaintiff to specify each defendant's participation in the alleged fraud." *Haley v. Corcoran*, 659 F. Supp. 2d 714, 724 (D. Md. 2009) (internal citation omitted). These defects are fatal to relators' FCA claims against AECOM. *See United States ex rel. Thomas v. Siemens AG*, 708 F. Supp. 2d 505, 515 (E.D. Pa. 2010) (dismissing FCA allegations against corporate parent as relators did "not allege that Siemens Corporation participated in the contract process and [did] not distinguish among the defendants. Nor [did relator] assert a claim for vicarious liability based on a piercing the corporate veil or an agency liability theory.").

More broadly, relators fail to plead with particularity any FCA violations by GLS. Although it is more than 100 pages, relators' FAC lacks key details. For instance, relators do not provide any details connecting GLS's alleged noncompliance to any payments under either Contract 1 or Contract 2. Relators also largely neglect to allege who at GLS made the allegedly false certifications or statements at issue. This lack of particularity does not meet Rule 9(b). *See Hedley v. ABHE & Svoboda, Inc.*, No. CIV.A. RDB-14-2935, 2015 WL 4626880, at *5 (D. Md. July 31, 2015) ("[T]he False Claims Act . . . oblig[es] Plaintiffs to plead the *identity* of those persons . . . who submitted the false claims or records."); *United States ex rel. Folliard v. Hewlett-Packard Co.*, 272 F.R.D. 31, 35 (D.D.C. 2011) (dismissing FCA claim where the relator failed to plead, *inter alia*, "who made the false statements and when they were made").

Moreover, relators plead over 40 allegations on "information and belief," including:

- "*Upon information and belief*, GLS falsely represented that it had complied with Contract 1, including, but not limited to, the level of participation of the Small Business Defendants, in submitting its proposal for Contract 2." FAC ¶ 92 (emphasis added).

- "*[U]pon information and belief*, the Small Business Subcontracting Plan submitted to the U.S. by GLS contained material false statements and certifications regarding GLS's intent to actually utilize Small Business Subcontractor resources." *Id.* ¶ 526 (emphasis added).

- "*Upon information and belief*, the semi-annual reports also knowingly and falsely certified that GLS had made a good faith effort to comply with its Small Business Subcontracting Plan, the FAR and all applicable federal small business statutes, to award particular percentages of its subcontracting work to Small Business Defendants." *Id.* ¶ 528 (emphasis added).

- "*[U]pon information and belief*, GLS made false statements or submitted false reports indicating that it was in compliance with Kuwaiti sponsorship requirements, and by those false representations, induced the U.S. to reimburse it for 'sponsorship' fees." *Id.* ¶ 532 (emphasis added).

See also id. ¶¶ 117, 119, 175, 491, 527. Pleading "on information and belief" is insufficient under Rule 9(b). *See United States ex rel. Moore v. Cardinal Fin. Co., L.P.*, No. CV CCB-12-1824, 2017 WL 1165952, at *13 (D. Md. Mar. 28, 2017) ("plaintiff must plead facts with sufficient specificity to satisfy Rule 9(b) . . . . Most of the allegations against Cardinal and Wells Fargo in the FAC are supported only on 'information and belief,' which is not sufficient."); *see also United States ex rel. Bogina v. Medline Indus., Inc.,* 809 F.3d 365, 370 (7th Cir. 2016) ("Allegations based on 'information and belief' thus won't do in a fraud case—for 'on information and belief' can mean as little as 'rumor has it that….'").[8]

B. Relators fail to allege an FCA violation regarding compliance with small business subcontracting obligations.

Relators assert that "GLS failed to satisfy GLS's Small Business Subcontracting Plan requirements and goals, the FAR and all applicable small business statutes" and that GLS

[8] Relators' "reverse false claim" (Count III) is particularly deficient. Relators simply restate their other FCA claims as a reverse false claim. *See* FAC ¶ 542 ("Defendants continued to submit false claims to avoid the forfeiture of GLS's contracts with the U.S."). This is insufficient. *See United States ex rel. Taylor v. Gabelli,* 345 F. Supp. 2d 313, 339 (S.D.N.Y. 2004) (dismissing relator's reverse false claim because it was redundant of his false certification claim and noting that it was essentially "two ways of describing the same transaction").

"falsely certified that it had complied" with the requirements. FAC ¶ 495, 498. Relators do not allege that *AECOM* failed to comply with the requirements of any small business subcontracting plan, the FAR or any statutes. Nor do relators allege that *AECOM* submitted any certifications falsely claiming compliance with such regulations. Even if AECOM can be held liable for GLS's actions, which it cannot, relators fail to state an FCA claim against GLS because they do not identify an objective falsehood nor have they sufficiently alleged materiality.

To satisfy the first element of an FCA claim, "the statement or conduct alleged must represent an objective falsehood." *United States ex rel. Wilson v. Kellogg Brown & Root, Inc.*, 525 F.3d 370, 376–77 (4th Cir. 2008); *see United States v. Kernan Hosp.*, 880 F. Supp. 2d 676, 688 (D. Md. 2012) ("The False Claims Act does not punish a system that *might* allow false claims to be sent to the government—instead, it punishes actual claims containing objective falsehoods."). In the FAC, relators do not allege any specific or objective falsehoods by GLS. They do not allege anything about what was contained in GLS's Small Business Subcontracting Plan or proposal, nor do relators allege any particular statements or other correspondence GLS exchanged with the U.S. Government about its small business subcontracting obligations. The FAC is entirely vacant with respect to specific statements or certifications about GLS's small business subcontracting obligations, likely because relators were linguists who were not involved with proposals or contract administration.

Instead, relators allege that the *manner* in which GLS employed subcontractors on Contract 1 somehow was improper. *See* FAC ¶ 95 (GLS "inten[ded] to deny the Small Business Defendants any meaningful role in the performance of Contract 1" and "seized for itself all meaningful performance of all the tasks necessary to perform Contract 1."). Relators also allege that GLS's Integrated Team Management Approach ("ITMA") did not give subcontractors

enough hands-on experience in fulfilling the contract. *See id.* ¶¶ 112-13. Whether GLS made optimal use of its subcontractors is not an objective question. "[M]ere 'allegations of poor and inefficient management of contractual duties' are 'not actionable under the [FCA].'" *Wilson*, 525 F.3d at 377 (*quoting Harrison*, 176 F.3d at 789). Criticism of GLS's approach to managing the contract is not enough to plead an "objective falsehood" under the FCA.

Similarly, relators suggest that various subcontractors somehow became "affiliated" with GLS, *see* FAC ¶ 86, but relators have again failed to plead an objective falsehood. Whether two businesses are "affiliated" with each other for purposes of Small Business Administration regulations involves a legal analysis of the "totality of circumstances." *See* 13 C.F.R. § 121.103(a)(5) ("In determining whether affiliation exists, SBA will consider the totality of the circumstances . . ."). "[I]mprecise statements or differences in interpretation growing out of a disputed legal question are similarly not false under the FCA." *United States ex rel. Lamers v. City of Green Bay*, 168 F.3d 1013, 1018 (7th Cir. 1999).[9]

In addition to failing to plead an objective falsehood, relators have failed to plead materiality. An alleged false statement or certification must be material, meaning it "ha[s] a natural tendency to influence, or be capable of influencing" the Government's decision to pay or receive money or property. 31 U.S.C. § 3729(b)(4). In other words, "a misrepresentation is material if it 'went to the very essence of the bargain'" between the Government and the defendant. *Universal Health Servs., Inc. v. United States*, 136 S. Ct. 1989, 2003 n. 5 (2016) (*quoting Junius Constr. Co. v. Cohen*, 257 N.Y. 393, 400, 178 N.E. 672, 674 (1931)). "The

[9] Relators' allegations regarding purported misrepresentations to the Commission on Wartime Contracting, *see* FAC ¶¶ 164-77, rely on the same theory as relators' other small business subcontracting claims, *i.e.*, the small business subcontractors were not used appropriately or were somehow "affiliated" with GLS. However, relators fail to include particularized allegations to support this theory and, in any case, fail to state an objective falsehood.

materiality standard is demanding." *Id.* at 2003. "A misrepresentation cannot be deemed material merely because the Government designates compliance with a particular statutory, regulatory, or contractual requirement as a condition of payment." *Id.* Where "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.* at 2003-04.

Relators must plead materiality "with plausibility and particularity under Federal Rules of Civil Procedure 8 and 9(b)." *Id.* at 2004 n. 6. They cannot simply set forth conclusory allegations asserting that statements or claims are material. They must support their conclusions with factual allegations indicating that the statements or claims at issue were material to the Government's decision to pay or receive money. *Id.* Here, relators do not, and cannot, claim that GLS failed to fulfill the key objective of its contract—to provide the U.S. military with linguists for its operations in Iraq. *See* FAC ¶ 64 ("Under Contract 1, the Government paid GLS for the service of having linguists available in-theater for translation and interpretation."). Relators have largely relied on conclusory allegations of materiality and allegations that the Government "may not have paid" invoices if it knew about GLS's alleged misrepresentations. *Id.* ¶ 502 ("Had the U.S. known of the falsity as to GLS's compliance with its Small Business Subcontracting Plan, the FAR, and applicable federal small business statutes, the Government may not have paid the invoices submitted under Contract 1."). This is not enough. *See Universal Health*, 136 S. Ct. at 2003 ("Nor is it sufficient for a finding of materiality that the Government would have the option to decline to pay if it knew of the defendant's noncompliance."). Relators must aver that the Government would not have paid GLS had it

known how GLS used its small business subcontractors and allege facts indicating that GLS's conduct goes to the "essence" of its bargain with the Government.[10] *See id.* at 2003 n. 5.

C. Relators fail to allege an FCA violation regarding compliance with Kuwaiti labor and immigration laws.

Next, relators allege that GLS "falsely represented…that it was in compliance with all U.S. laws and Kuwaiti labor and immigration laws." *See* FAC ¶ 529. Relators also allege that GLS "made false statements or submitted false reports indicating that it was in compliance with Kuwaiti sponsorship requirements." *Id.* ¶ 532. Relators allege that numerous "Kuwaiti immigration and labor laws" were violated because GLS and its local sponsor in Kuwait, Alshora, allegedly worked together to make it appear that relators were employed by Alshora when they allegedly were not. *See generally id.* ¶¶ 126-33. Once again, relators do not allege that *AECOM* made any false representations or statements or submitted any false reports. Nor do relators allege that *AECOM* violated any Kuwaiti immigration or labor laws. Even if relators' allegations are considered just as to GLS, relators still fail to state an FCA claim.

Most notably, relators' failure to plead with particularity is especially egregious with respect to this claim. Despite using the phrase "immigration and labor laws" repeatedly, relators rarely cite to any specific provisions of law.[11] Instead, relators provide only vague descriptions of what they purport are obligations mandated by Kuwaiti law. *See, e.g.,* FAC ¶ 132 ("Under Kuwaiti law, there are minimum salary eligibility requirements imposed on foreign nationals for bringing their dependents into the country to live with them and, upon information and belief, for obtaining a driver's license."); *see also id.* ¶¶ 138, 569. This lack of particularity is fatal.

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[10] In fact, the Government did know about the allegations of GLS's purported misuse of its small business subcontractors, *see infra* pp. 21-22, yet the Government continued to pay GLS under Contract 1 and even awarded Contract 2 to GLS.

[11] At one point, relators quote a provision from "Kuwait's Private Sector Labor Law." *See* FAC ¶¶ 563-64. However, relators do not link any GLS actions to the quoted statutory provision.

In any case, relators only assert conclusory allegations regarding whether compliance with Kuwaiti laws were material to the Government's decision to pay GLS. *See, e.g.,* FAC ¶ 505 ("GLS has engaged in a protracted course and pattern of conduct that was material to the U.S.'s decision to pay these false claims."). Relators provide no factual basis from which one could conclude that compliance with Kuwaiti laws goes to the very essence of GLS's contracts. Nor could they, as the Government was primarily concerned with whether qualified linguists were available. *See supra* p. 14. In short, relators have identified nothing more than an alleged "garden variety breach[] of contract or regulatory violation[]." *Universal Health*, 136 S.Ct. at 2003.[12] Without some factual allegations to support the claim that the Government would not have paid GLS had it known about the purported misrepresentations, relators' claims cannot survive.[13]

D. Relators fail to allege an FCA violation regarding compliance with the TVPRA.

[12] Relators cite to DFARS 252.222-7002(a) regarding contractors' obligations to comply with local labor laws. *See* FAC ¶ 561 (Relators cite "FAR 252.222-7002" but this provision appears in the DFARS). However, sections (b) and (c) of that DFARS clause address when the contractor will be reimbursed for the costs of all fines, penalties and reasonable litigation expenses concerning allegations that the contractor has "not fully complied with local labor laws or regulations . . . ." Indeed, there are even specific circumstances when a contractor can violate local labor laws and still be reimbursed for litigating the claim or paying fines or penalties. *See* DFARS 252.222-7002(c); *see also* FAR 31.205-15(a). This provision suggests that the failure to comply with local labor laws may not even be viewed as a breach of contract by the Government, let alone as a violation of the FCA. *See United States v. Comstor Corp.*, 308 F. Supp. 3d 56, 87 (D.D.C. 2018) (agency's "expressed willingness to 'work with,' vendors in order to address [Trade Agreement Act] compliance issues instead of outright rejecting claims" cut against finding materiality).

[13] Relators also allege that GLS somehow violated National Industrial Security Program Operating Manual ("NISPOM") regulations, which involve whether a U.S. company is under foreign ownership or control. *See* FAC ¶¶ 160-63. However, this allegation is dependent on relators' claim that GLS violated Kuwaiti law as GLS's alleged "misrepresent[ations] to Kuwaiti authorities…exposed Contract 1 to foreign influence and control." *Id.* ¶ 163. As relators have failed to adequately allege an FCA violation based on GLS's compliance with Kuwaiti law, a claim based on purported violations of NISPOM regulations must also fail.

Relators also argue that GLS falsely represented that it was in compliance with the TVPRA. *See* FAC ¶ 506 ("GLS made false claims under Contract 1 by submitting invoices for payment to the U.S. when GLS knew that it was not in compliance with the TVPRA"). Here too, they do not allege that *AECOM* violated the TVPRA, employed any of the linguists, or was involved in certifying compliance with the TVPRA. Even as to GLS, relators have failed to allege that compliance with the TVPRA was material.

Relators have not offered any factual basis to conclude that the Government "would not have paid" (*id.* ¶¶ 505, 517), or "may not have paid" (*id.* ¶ 534), had it known of the supposed TVPRA violations. Indeed, relators repeatedly acknowledge that the purposes of Contracts 1 and 2 were to provide "foreign language linguistic, interpretation and translation services for the U.S. Army." *Id.* ¶¶ 3-4; *see also id.* ¶¶ 61, 63. Relators even identified themselves as "security-cleared linguists, translators and interpreters for [the] U.S. military." *Id.* ¶ 5. Thus, while compliance with the TVPRA may be an important obligation of contractors, that does not mean such compliance goes to the "very essence" of the contracts at issue here. *See Universal Health*, 136 S. Ct. at 2003 n. 5.

Relators have also failed to plead that any purported certification based on compliance with the TVPRA was false as they have not plausibly alleged that GLS (much less AECOM) violated the TVPRA. *See infra* Section VII. As such, any FCA claim based on an alleged failure to comply with the TVPRA must be dismissed.

E. Relators fail to plausibly plead scienter.

Relators have also failed to plausibly plead scienter with respect to the alleged statutory, regulatory, and contractual violations described above. The FCA requires relators to allege that a defendant "knowingly" made false claims and statements. "Knowingly" means that the defendant: "(i) has actual knowledge of the information; (ii) acts in deliberate ignorance of the

truth or falsity of the information; or (iii) acts in reckless disregard of the truth or falsity of the information." 31 U.S.C. § 3729(b)(A). Relators cannot rely on the collective knowledge of an entity's various officers or agents to establish scienter. Rather, they "must prove an entity's scienter by demonstrating that a particular employee or officer acted knowingly." *United States v. Fadul*, No. CIV.A. DKC 11-0385, 2013 WL 781614, at *9 (D. Md. Feb. 28, 2013) (citing *United States v. Sci. Applications Int'l Corp.*, 626 F.3d 1257, 1274 (D.C. Cir. 2010)).

Relators repeatedly claim that GLS "knowingly" made false claims, but they do not identify a single employee or officer at GLS (or any other defendant company) who knew that any material statutory, regulatory, or contractual requirements were being violated. Relators cannot rely on the collective knowledge of various unidentified GLS officers and employees to cobble together a claim that the defendants knowingly presented false claims to the Government. Rather, relators must allege "that a particular employee or officer acted knowingly." *Id.* at *9. They have not done so.

V. RELATORS' FCA CLAIMS ARE FORECLOSED BY THE PUBLIC DISCLOSURE BAR

Notwithstanding the deficiencies mentioned above, relators' FCA claims also fail because they are foreclosed by the FCA's public disclosure bar. The FCA contains a public disclosure bar, 31 U.S.C. § 3730(e)(4), "to prevent 'parasitic' *qui tam* actions in which relators, rather than bringing to light independently-discovered information of fraud, simply feed off of previous disclosures of government fraud." *United States v ex rel. Siller v. Becton Dickenson & Co.*, 21 F.3d 1339, 1347 (4th Cir. 1994). "[I]t is only sensible in the FCA context that the complainant must contribute something to the suit if he is to benefit from it financially." *United States ex rel. Lopez v. Strayer Educ., Inc.*, 698 F. Supp. 2d 633, 636 (E.D. Va. 2010) (internal citations omitted). Relators do not contribute anything useful by repeating information that has

already been disclosed. *See Grynberg v. Koch Gateway Pipeline Co.*, 390 F.3d 1276, 1279 (10th Cir. 2004) ("Once the government is put on notice of its potential fraud claim, the purpose behind allowing qui tam litigation is satisfied."). For that reason, the public disclosure bar is triggered if the public domain contains information sufficient to place the *government* on notice of the likelihood of fraud. *See United States ex rel. Black v. Health & Hosp. Corp. of Marion Cty.*, No. CIV.A. RDB-08-0390, 2011 WL 1161737, at *7 (D. Md. Mar. 28, 2011), *aff'd,* 494 F. App'x 285 (4th Cir. 2012) ("[T]o trigger the Public Disclosure Bar, a disclosure need not specifically show fraud, but must merely be sufficient to put the government on notice of the likelihood of fraudulent activity.") (internal citations omitted).

A. Relators' allegations regarding small business subcontracting were based upon public disclosures and relators are not original sources.

Relators' claims regarding GLS's purported failure to comply with its "Small Business Subcontracting Plan requirements and goals, the FAR and all applicable small business statutes" are based upon public disclosures—namely testimony given to the Commission on Wartime Contracting, which relators *explicitly quote in the First Amended Complaint*, *see* FAC ¶¶ 164-77. Relators are also not original sources of the information.

As an initial matter, the FCA's public disclosure bar was amended effective March 23, 2010. As the amendment was not retroactive and relators' allegations relate to activity occurring before March 23, 2010, the pre-amendment version of the statute applies to relators' small business allegations.[14] *See United States ex rel. May v. Perdue*, 737 F.3d 908, 914 (4th Cir.

[14] Relators allege that "each of the claims for payment that GLS submitted to the U.S. under Contract 1 was a false claim" because of GLS's purported false certifications regarding small business requirements. FAC ¶ 498. Relators do not allege the specific dates of any such claim or other details about GLS's activity post-March 23, 2010. However, to the extent any allegations relate to actions occurring after March 23, 2010, such claims would still be barred by the post-amendment version of the public disclosure bar as they are substantially the same as the allegations and transactions publicly disclosed and relators are not original sources.

2013). As the pre-amendment version of the public disclosure bar is jurisdictional, relators' claims should be dismissed pursuant to Rule 12(b)(1).

Under the pre-amendment statute, the public disclosure bar provides that:

> [n]o court shall have jurisdiction over an action under this section based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative ... report, hearing, audit, or investigation ... unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.

31 U.S.C. § 3734(e)(4)(A) (2006). Because the pre-amendment bar is jurisdictional, "[a] relator bears the burden of proving that the public disclosure bar does not preclude his FCA action." *May*, 811 F.3d at 640; *see also United States ex rel. Vuyyuru v. Jadhav*, 555 F.3d. 337, 347 (4th Cir. 2009) ("When, as here, a defendant challenges the existence of subject matter jurisdiction in fact, the plaintiff bears the burden of proving the truth of such facts by a preponderance of the evidence."); *Black*, 2011 WL 1161737, at *5 ("Under Rule 12(b)(1), it is [the relator] who must prove that subject matter jurisdiction exists. When jurisdictional facts are disputed, a presumption of truthfulness does not attach to the Plaintiff's allegations, and the court is permitted to consider extrinsic evidence.") (internal citations omitted).

The pre-amendment version of the public disclosure bar thus requires the court "to answer three questions: Was there a public disclosure? If there was a public disclosure, was the *qui tam* action based on the public disclosure? If the action was based on the public disclosure, was the qui tam plaintiff an original source?" *United States ex rel. Wilson v. Graham Cty. Soil & Water Conservation Dist.*, 528 F.3d 292, 299 (4th Cir. 2008).

1. *Relators' allegations are "based upon" public disclosures.*

Here, there can be no doubt that the testimony and materials made public in relation to the August 2009 hearing are public disclosures because they arise from "a congressional ... report, hearing, audit, or investigation." 31 U.S.C. § 3730(e)(4)(A); *see United States ex rel.*

Fine v. Sandia Corp., 70 F.3d 568, 571 (10th Cir. 1995) (GAO report and congressional hearing were public disclosures because they "detailed the mechanics" of the defendant's conduct such that the Government was "sufficiently alerted" to the likelihood of fraud.).[15]

Additionally, key allegations and transactions raised by the CWC, an entity charged with "investigat[ing] fraud, waste, abuse and mismanagement of wartime government contracts" (¶ 164), put the Government on notice of the same fraud relators have tried to allege with respect to small business subcontracting. *See United States ex rel. Moore v. Cardinal Financial Co*., 12-cv-1824, 2017 WL 1165952, at * 10 (D. Md. March 28, 2017) (*citing United States ex rel. Springfield Terminal Railway Co. v. Quinn*, 14 F.3d 645, 653–55 (D.C. Cir. 1994) (a "transaction" reflecting fraud occurs when two documents are disclosed from which readers could infer fraud has been committed)). These key allegations and transactions form the basis for relators' allegations regarding GLS's purported failure to comply with small business subcontracting requirements.

While the Fourth Circuit interprets the "based upon" language in the pre-amendment statute as requiring a relator to have "actually derived" from a public disclosure the allegations upon which a *qui tam* is based, *Siller*, 21 F.3d at 1348, the complaint need not be completely derived from a public disclosure. *See Vuyyuru*, 555 F.3d at 351 ("Section 3730(e)(4)(a)'s public disclosure jurisdictional bar encompasses actions even partially based upon prior public disclosures."). As such, relators must show by a preponderance of the evidence that their

[15] The CWC hearing was also widely reported in the news media. *See, e.g.,* Elizabeth Newell Jochum, *Defense Says Extensive Outsourcing on Iraq Linguist Contract is Jacking Up Costs*, Government Executive (Aug. 12, 2009), https://www.govexec.com/defense/2009/08/defense-says-extensive-outsourcing-on-iraq-linguist-contract-is-jacking-up-costs/29745/; *Feds Question Iraq Interpreter Contract,* NBC News (Aug. 12, 2009, 7:33 PM), http://www.nbcnews.com/id/32393792/ns/world_news-mideast_n_africa/t/feds-question-iraq-interpreter-contract/#.XFRj5lxKiUl).

allegations were not based – in whole or in part – on previous public disclosures that would have alerted the Government to the potential for fraud. Relators have failed to do so.

At the CWC hearing, GLS, and others, clearly explained how the Government benefited from the ITMA model used to perform the contract. The hearing also explored allegations that subcontractors had little involvement in the contract. Relators actually quote from the CWC hearing, *see* FAC ¶¶ 167, 169, 171, 174, and it is evident that their core allegations are "based upon" allegations discussed at the hearing:

Public Disclosure	**First Amended Complaint**
The "subcontractors do not hire, manage, or interact with the linguists other than to pay the amount stipulated by GLS." CWC Hearing, Ex. 1 at 8. [16]	"GLS, not the Small Business Defendants, screened the individuals who responded to advertisements for linguists, and selected candidates…." FAC ¶ 100. "GLS, not Small Business Defendants, managed Relators…." FAC ¶ 106.
GLS does "all of the recruiting, the hiring, the training, and, essentially, the management on the ground. The subcontractors are responsible for seemingly very little." CWC Hearing at 9.	"GLS seized for itself all meaningful performance of all the tasks necessary to perform Contract 1." FAC ¶ 95.
"I am going to be slightly exaggerating and call [the small business subcontractors] do-nothing subcontractors…." CWC Hearing at 15.	"GLS certified that the work was being performed by the Small Business Defendant…However, GLS knew that the work under Contract 1 was actually being performed by GLS itself." FAC ¶ 527.

These allegations, as disclosed to the public via a Congressional hearing, amount to a public disclosure of relators' allegations.[17] Further, it is evident from both relators' direct citation to the

[16] The CWC hearing transcript and witness statements are publicly available at https://cybercemetery.unt.edu/archive/cwc/20110929231242/http://www.wartimecontracting.gov/index.php/hearings/commission/hearing20090812. For ease of review, an excerpt from the transcript, with pagination added, has been attached as Exhibit 1.

[17] Relators' "fee on fee" allegation relies entirely on the CWC hearing. *See* FAC ¶¶ 174-75.

CWC hearing and the similarity between the allegations in the FAC and the content of the hearing that the allegations regarding Contract 1 are "based upon" these public disclosures.[18]

2. *Relators are not original sources.*

Relators have relied upon allegations previously disclosed and are not original sources. The pre-amendment version of the public disclosure bar defines an "original source" as:

> an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the Government before filing an action under this section which is based on the information.

31 U.S.C. § 3730(e)(4)(B) (2006). Here, there is no indication beyond a conclusory statement that "[r]elators are original sources who provided evidence to the U.S. of such misconduct" that any specific relator, let alone all of them, have "direct and independent knowledge." FAC ¶ 6.

Each relator must have "direct *and* independent knowledge" of each allegation in the First Amended Complaint to qualify as an original source under the pre-amendment version of the FCA. 31 U.S.C. § 3730(e)(4)(B) (2006) (emphasis added). A relator's knowledge is "direct" if "he acquired it through his own efforts, without an intervening agency." *See United States ex rel. Grayson v. Advanced Mgmt. Tech., Inc.*, 221 F.3d 580, 583 (4th Cir. 2000). Independent knowledge is knowledge that "is not dependent on public disclosure." *Id.* (citation omitted). Merely conducting research does not grant a person "direct and independent knowledge." *See Rockwell Int'l Corp. v. United States ex rel. Stone*, 549 U.S. 457 (2007) (holding that relator did not have "direct and independent knowledge" as he did not have firsthand knowledge of specific

[18] Prior litigation brought by one of GLS's subcontractors implicated the same contracts and the same small business obligations as relators' claims. *See Shee Atika Languages, LLC v. Global Linguist Solutions, LLC*, 1:13-cv-850 LMB/TRJ (E.D. Va.). News reports about the *Shee Atika* litigation contain additional public disclosures underlying relators' claims. *See, e.g.*, Stewart Bishop, Army Translation Contractor Breached $697M Deal, Suit Says, Law360 (July 16, 2013), https://www.law360.com/articles/457435/army-translation-contractor-breached-697m-deal-suit-says.

fraud allegations). Relators have neither direct nor independent knowledge of the information on which their allegations are based.

Relators do not have direct knowledge because they do not include any allegations regarding their involvement with the purportedly false certifications that GLS is supposed to have made with respect to its small business obligations. This is hardly surprising as relators were employed as "linguists, translators and interpreters" and would not have been involved with contract proposals, contract administration, contract certification or requests for payment under the contract. Nor is relators' information independent of the CWC disclosures. As discussed above, relators' core allegations of fraud are based upon statements made in the CWC hearing that the small business contractors allegedly had minimal contributions to Contract 1. In short, relators are not original sources.

B. Relators' allegations regarding compliance with Kuwaiti law and the TVPRA are substantially similar to public disclosures and relators are not original sources.

Relators' claims regarding GLS's purported failure to comply with Kuwaiti "immigration and labor laws" and the TVPRA are substantially similar to allegations and transactions publicly disclosed in prior litigation and the news media. Relators are also not original sources.

Relators' false certification claims regarding alleged noncompliance with Kuwaiti law and the TVPRA appear largely based on activity occurring after March 23, 2010. Thus, the post-amendment version of the FCA's public disclosure bar would apply. The post-amendment version of the bar "is [] grounds for dismissal—effectively, an affirmative defense—rather than a jurisdictional bar." *United States ex rel. Beauchamp v. Academi Training Ctr.*, LLC, 816 F.3d 37, 40 (4th Cir. 2016). It provides:

> The court shall dismiss an action or claim under this section, unless opposed by the Government, if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed—(i) in a Federal criminal, civil, or administrative

> hearing in which the Government or its agent is a party; (ii) in a congressional, Government Accountability Office, or other Federal report, hearing, audit, or investigation; or (iii) from the news media, unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.

31 U.S.C. § 3730(e)(4)(A) (2010). Here, relators' claims warrant dismissal.

1. *Relators' allegations are substantially the same as allegations and transactions revealed in prior public disclosures.*

Allegations and transactions that are substantially the same as relators' allegations were previously disclosed through earlier litigation and media reports. As noted above, two civil actions were previously filed against GLS, DI, and AECOM by linguists working on Contract 1 and/or Contract 2. *See Zinnekah v. Global Linguist Sols., LLC,* Case No. 1:13-cv-01185 (E.D.V.A.); *Zaklit v. Global Linguist Sols., LLC,* Case No. 1:14-cv-314 (C.D. Cal.).[19] Both actions alleged that GLS violated "Kuwaiti immigration laws" and took actions causing linguists to fear arrest and deportation. These cases and the relationship between GLS and Alshora were widely covered in the news media. Allegations and transactions disclosed through the news media are public disclosures. *See* 31 U.S.C. § 3730(e)(4)(A).

The post-amendment version of the public disclosure bar prohibits allegations that are "substantially the same allegations or transactions" that have been publicly disclosed. *Id.*; *see Black* 2011 WL 1161737, at *6 (finding that the "substantially the same" language in the amendments adopted the broader majority view), *aff'd*, 494 Fed. App'x 285 (4th Cir. 2012) (ruling that the public disclosures were sufficient to put the federal government on notice of a potential fraud, and that it was not necessary to match the allegations made by the qui tam relator with specificity).

[19] The Court may take judicial notice of public court filings without converting the present Motion to a motion for summary judgment. *See supra* p. 4.

The ample media coverage appearing prior to relators' commencement of this action includes allegations regarding performance of the contract, treatment of the linguists, and compliance with Kuwaiti law that are "substantially the same" as those included in the First Amended Complaint.

Public Disclosure	**First Amended Complaint**
"The complaint asks the court to demand GLS comply with Kuwaiti laws…It accuses GLS of breaking Kuwaiti law…." Oct. 8, 2013 article, Ex. 2.[20]	"GLS knew that it was not in compliance with…Kuwaiti labor and immigration law, which was a requirement for payment under Contract 1." FAC ¶ 506.
"Several [linguists] at Buehring said they canceled the power-of-attorney they gave GLS earlier in the dispute and that they say the company used to file a lawsuit against Al Shora in Kuwaiti court." Oct. 8, 2013 article.	"GLS abused Kuwait's legal processes by filing suit against Alshora, naming Plaintiffs as the plaintiffs in those lawsuits, without Plaintiffs' knowledge or informed consent." FAC ¶ 589.
"The linguists also said GLS tried to have them sign a statement admitting to having broken Kuwaiti laws, but that most refused." Oct. 8, 2013 article.	"GLS further abused Kuwait legal processes by coercing the Resident Visa Relator/Plaintiffs into signing false confessions to crimes they did not commit." FAC ¶ 590.
The linguists "'were trapped because they could not venture out beyond the compound for fear of arrest by Kuwait authorities'…." Oct. 2, 2013 article, Ex. 3.[21]	GLS "caused Relators to be arrested, placed in fear of arrest, and because of such fear of wrongful arrest, caused Relators to be confined to Camps Arifjan and Buehring." FAC ¶ 512.

[20] Steven Beardsley, *American Linguists in Kuwait Seek Help from US Courts to Return Home,* Stars and Stripes (Oct. 8, 2013), https://www.stripes.com/american-linguists-in-kuwait-seek-help-from-us-courts-to-return-home-1.245844.

[21] Yochi Dreazen, *Investigation: No Exit,* Foreign Policy (Oct. 2, 2013, 11:55 PM), https://foreignpolicy.com/2013/10/02/no-exit-3/). This same article includes quotes from both the U.S. Army Intelligence and Security Command and the U.S. Department of State indicating that the U.S. Government knew about the allegations underlying relators' claims. When the Government knows about alleged contractual, statutory or regulatory violations but continues to pay invoices, that further indicates that these purported violations were not material. *Universal Health*, 136 S. Ct. at 2003 ("[I]f 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.").

"A group of translators and interpreters working on a U.S. military base in Kuwait filed for class certification…saying they were forced to remain in substandard conditions without proper medical care after their passports were illegally confiscated." Sept. 2, 2014 article, Ex. 4.[22]	GLS "confiscated Relators' passports while in-country…." FAC ¶ 11. Relators "were denied medical care for illnesses and injuries…." *Id.* ¶ 182.
"'GLS's actions and legal dispute with Al Shora made plaintiffs and other linguists fugitives in a foreign country,' the complaint says." Sept. 2, 2014 article.	"GLS caused Plaintiffs ito [*sic*] be in on-going violation of Kuwaiti law." FAC ¶ 582.
"The plaintiffs allege that 40 linguists were packed into a 3,000-square-foot tent with limited air conditioning and running water, toilets that frequently did not work, and little or no electricity." Sept. 2, 2014 article.	"The crowded conditions overwhelmed the tent's air-conditioning and the tents were hot." FAC ¶ 186.
"'Plaintiffs and Class Members did not know when they were hired that their employment with GLS would be unlawful in Kuwait….'" Sept. 5, 2014 article, Ex. 5.[23]	"Plaintiffs were led to believe that GLS would act in accordance with the law in obtaining the necessary immigration approvals and necessary authorizations for Plaintiffs to work in Kuwait." FAC ¶ 572.

As evident above, relators' allegations are substantially the same as the allegations publicly disclosed in the news media.

2. *Relators are not original sources.*

Relators have not only relied upon allegations previously disclosed, but they are also not original sources. The post-amendment public disclosure bar defines an "original source" as:

> an individual who either [1] 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

[22] Dietrich Knauth, *Army Translators Seek Class Cert. In False Imprisonment Suit,* Law360 (Sept. 2, 2014), https://www.law360.com/articles/572639/army-translators-seek-class-cert-in-false-imprisonment-suit.

[23] Karina Basso, *Army Translators File False Imprisonment Class Action Lawsuit,* Top Class Actions (Sept. 5, 2014), https://topclassactions.com/lawsuit-settlements/lawsuit-news/39752-translators-file-false-imprisonment-class-action-lawsuit-gls/.

> voluntarily provided the information to the Government before filing an action under this section.

31 U.S.C. § 3730(e)(4)(B). There are no allegations that relators voluntarily disclosed anything to the Government prior to these media reports. Nor have relators alleged with any specificity that their knowledge is independent of and materially adds to publicly disclosed allegations or transactions, indeed much of their supposed knowledge is provided "on information and belief." Instead, they simply assert that their knowledge materially adds to "any existing allegations and transactions that have already been publicly disclosed" although they do not identify what those "existing allegations and transactions" are. FAC ¶ 58.

As noted above, independent knowledge is knowledge that "is not dependent on public disclosure." *See Grayson,* 221 F.3d at 583. A relator "materially adds" to the publicly disclosed allegation or transaction of fraud when she "contributes information—distinct from what was publicly disclosed—that adds in a significant way to the essential factual background: 'the who, what, when, where and how of the events at issue.'" *United States ex rel. Moore & Co., P.A. v. Majestic Blue Fisheries, LLC*, 812 F.3d 294, 307 (3d Cir. 2016). Relators' allegations do not materially add anything to the public disclosures identified above. At their heart, relators' claims are based on purported false certifications regarding compliance with Kuwaiti labor and immigration laws. Relators also allege that GLS violated the FCA by certifying compliance with the TVPRA when it was actually obtaining "forced labor" from relators by keeping them in fear of deportation and arrest. While the First Amended Complaint includes details about individual relators' experiences in Kuwait, these additional details are unrelated to any allegations of fraud.

VI. RELATORS' FCA CLAIMS REGARDING CONTRACT 1 ARE TIME-BARRED

The FCA's statute of limitations prohibits claims from being brought "more than 6 years after the date on which the violation . . . is committed." 31 U.S.C. § 3731(b)(1). Although the

First Amended Complaint does not include any dates as to when specific claims were submitted, it's clear from its face that most of the allegations central to relators' claims involving Contract 1 occurred more than 6 years before relators named AECOM as a defendant in the First Amended Complaint filed on March 25, 2016.[24] For instance, relators allege "misrepresentations in GLS's bid for Contract 1." *See* FAC ¶ 7. Relators do not allege when GLS submitted its bid for Contract 1 but GLS "was awarded Contract 1 in early 2008." *Id.* ¶ 60. Thus, GLS's bid must have been submitted before "early 2008," which would have placed such representations well before March 25, 2010. Accordingly, relators' claims should be dismissed.[25]

Relators attempt to preempt this statute of limitations defense by asserting, without legal or factual support, that the statute of limitations is "tolled by virtue of Defendants' concealment of their unlawful actions at the time they occurred" and that Defendants are "equitably estopped" from invoking a statute of limitations defense. *See* FAC ¶ 57. However, the FCA's statute of limitations begins running when the relevant false claim or statement is submitted. *See United States ex rel. Dugan v. ADT Sec. Servs., Inc.,* No. CIV.A.DKC 20033485, 2009 WL 3232080, at *4 (D. Md. Sept. 29, 2009) (noting that "the majority of the federal circuits have concluded that the statute of limitations starts to run when a false claim is submitted to the government."). While the FCA does include a three-year equitable tolling provision, 31 U.S.C. § 3731(b)(2), this

[24] The FAC does not relate back to the original complaint under Rule 15(c) because AECOM did not receive notice of the suit. Under Rule 15(c), for a claim against a new defendant to relate back, "the new party must have received adequate notice *within the limitations period* and suffer no prejudice in its defense." *Goodman v. Praxair, Inc.*, 494 F.3d 458, 473 (4th Cir. 2007) (emphasis added). The "plaintiff has the burden of locating and suing the proper defendant within the applicable limitations period." *Id.* Even if the FAC is found to relate back to the original complaint, relators' allegations regarding Contract 1 implicate actions occurring more than six years before June 19, 2015, the date when they filed their original complaint.

[25] "A complaint showing that the governing statute of limitations has run on the plaintiff's claim for relief…provides a basis for a motion to dismiss under Rule 12(b)(6)." 5B Charles A. Wright & Arthur R. Miller, Federal Practice & Procedure § 1357, at 714 (3d ed. 2004) (").

provision is not available to relators. *United States ex rel. Sanders v. N. Am. Bus Indus., Inc.*, 546 F.3d 288, 293 (4th Cir. 2008) ("We hold that Section 3731(b)(2) extends the FCA's statute of limitations beyond six years only in cases in which the United States is a party.").[26] As such, relators' claims regarding Contract 1 should be dismissed.

VII. RELATORS FAIL TO STATE TVPRA CLAIMS

In Count IV, relators assert individual claims against all defendants under the Trafficking Victims Protection Reauthorization Act, a statute whose purpose is "to combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims." 22 U.S.C. § 7101(a). Despite having each voluntarily signed employment agreements to work in Kuwait—with some relators signing multiple employment agreements, *see*, *e.g.*, FAC ¶¶ 283-289 (detailing five employment agreements signed by relator Fadlalla)— relators assert that they were subjected to forced labor. As with relators' FCA claims, relators include no specific allegations against *AECOM*. They do not allege that *AECOM* employed any of the relators, managed any of the relators, or worked with any of the relators. Even setting aside the lack of allegations against AECOM, relators' TVPRA claims are deficiently pled, implausible on their face, and should be dismissed.[27]

As an initial matter, relators cite 18 U.S.C. § 1592, which prohibits certain conduct with respect to passports and immigration documents. However, Section 1592 does not apply

[26] In November 2018, the Supreme Court granted certiorari to review *United States ex rel. Hunt v. Cochise Consultancy, Inc.*, 887 F.3d 1081 (11th Cir. 2018), which implicates this issue.
[27] Relators allege that they suffered "emotional distress and physical injuries that went untreated." FAC ¶ 593. However, to the extent relators are seeking damages under the TVPRA for injuries occurring while in Kuwait, such claims would be preempted by the Defense Base Act, 42 U.S.C. § 1651 *et seq.,* which provides the exclusive remedy. *See Brink v. Cont'l Ins. Co.,* 787 F.3d 1120, 1124-27 (D.C. Cir. 2015) (affirming dismissal of RICO and various tort claims as preempted by the Defense Base Act).

extraterritorially. *See* 18 U.S.C. § 1596 (neglecting to extend extra-territorial jurisdiction to an offense under section 1592); *see also Petersen v. Boeing Co.*, No. CV-10-00999-PHX-ROS, 2014 WL 12516257, at *9 (D. Ariz. July 1, 2014) (holding that § 1592 "does not have extraterritorial effect"). Accordingly, this Court would not have jurisdiction over any claims relators purport to bring under this section as all of relators' allegations relate to activity in Kuwait. *See Warfaa v. Ali*, 811 F.3d 653, 661 (4th Cir. 2016) (applying presumption against extraterritoriality and affirming dismissal for lack of jurisdiction).

Most of relators' remaining TVPRA allegations are centered around the contention that GLS subjected them to "forced labor" in violation of 18 U.S.C. § 1589(a). Although the First Amended Complaint is not entirely clear, it appears that relators are claiming that GLS "knowingly" obtained relators' labor or services "by means of the abuse or threatened abuse of law or legal process."[28] 18 U.S.C. § 1589(a)(3). Relators assert a hodgepodge of alleged abuses of law or legal process, which include "ordering Relators and their colleagues to engage in 'visa runs'" (FAC ¶ 511), "filing suit against Alshora, naming Plaintiffs as the plaintiffs in those lawsuits" (¶ 589), "coercing the Resident Visa Relator/Plaintiffs into signing false confessions" (*id.* ¶ 590), and "misrepresenting Plaintiffs to Kuwaiti authorities…as the employees of a Kuwait company Alshora" (*id.* ¶ 591). Relators also allege that GLS was "confiscating" relators' passports. *See id.* ¶¶ 11, 574. Each of these allegations fail to state a claim under the TVPRA.

Under the TVPRA, the phrase "abuse of the law or legal process" is defined as "the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, *in order to exert pressure on*

[28] Relators allege that GLS used "threats of force, physical restraint, and threats of physical restraint" to keep relators in Kuwait, *see* FAC ¶ 586, but do not provide any further detail.

another person to cause that person to take some action or refrain from taking some action." 18 U.S.C. § 1589(c)(1) (emphasis added); *see also Muchira v. Al-Rawaf*, 850 F.3d 605, 622-23 (4th Cir. 2017) (demonstrating "abuse" of law or legal process "requires proof that the defendant 'knowingly' abused the law or legal process as a means to *coerce* the victim to provide labor or services against her will.") (emphasis in original). The typical case is where an employer threatens an employee with deportation to induce that employee to keep working. *See, e.g.*, *Kiwanuka v. Bakilana*, 844 F. Supp. 2d 107, 111 (D.D.C. 2012) (defendant recorded telling plaintiff that "she would be immediately escorted out of the country by the FBI if she stopped working for the defendants.").

Here, however, relators do not allege that they were personally threatened by GLS with any adverse consequence in order to induce them to take, or refrain from taking, some action. Rather, relators primarily allege that GLS violated Kuwaiti immigration and labor law and took legal actions purportedly against relators' interests. *See, e.g.,* FAC ¶ 121 (GLS "abused Kuwaiti legal processes by…fil[ing] civil complaints in the names of Resident Visa Relators…where the filing of such civil actions caused Resident Visa Relators to be named in counterclaims"); *id.* ¶¶ 122-23 (GLS "coerced Resident Visa Relators to sign confessions" which caused those relators to be "expelled from Kuwait," "barred from reentry," "blacklisted," and "rendered ineligible for rehire as linguists"). As pled, there is simply no connection between GLS's alleged abuse of law or legal process and an intent to coerce relators to keep working on these contracts. *See Muchira*, 850 F.3d at 622 (establishing "abuse or threatened abuse of law or legal process . . . requires more than evidence that a defendant violated other laws of this country or encouraged others to do the same"). In the absence of any allegations that relators continued to work

because of these alleged actions, relators have, at most, simply alleged that they feared that third parties—the Kuwait Government or Alshora—might take action against them.[29]

Further, while much of relators' TVPRA claims rely on the assertion that GLS violated Kuwaiti law, relators have not adequately pled that GLS's actions constituted a violation of Kuwaiti law. For instance, relators include conclusory allegations regarding what Kuwaiti law required. *See, e.g.,* FAC ¶ 566 ("Under Kuwait's immigration laws, it is illegal for a U.S. citizen to enter Kuwait for the purpose of working without first obtaining a State of Kuwait Resident Visa"); *id.* ¶ 569 ("Under Kuwaiti law, GLS was prohibited from recruiting linguists from the U.S. without reporting to the Kuwaiti Government that such laborers were working for GLS."); *id.* ¶ 570 ("Under Kuwait law, Kuwaiti companies, such as Alshora, are barred from representing to government authorities that expatriate laborers who performed no work for Alshora were Alshora's employees."). However, relators do not actually cite to any provision of Kuwaiti law. Such conclusory allegations are exactly the type of bare legal conclusions the Supreme Court has instructed courts to disregard. *See Iqbal*, 556 U.S. at 678; *Kowal v. MCI Commc'ns Corp.*, 16 F.3d 1271, 1276 (D.C. Cir. 1994); *see also SEC v. Jackson*, 908 F. Supp. 2d 834, 859 (S.D. Tex. 2012) (dismissing Foreign Corrupt Practices Act claim where SEC alleged, in conclusory fashion, that the granting of permit extensions by the Nigerian government qualified as a

[29] Far from securing work from relators, relators have alleged that GLS's actions resulted in the issuance of a stop work order by the Kuwaiti Government that *prevented* relators from working. *See* FAC ¶ 378 ("The stop work order issued by Kuwaiti Army Staff Major General Abd Al-Razak Mohammed Al-Awadi on February 19, 2013, prevented [relator] Elsebaey from accompanying LTG Brooks to Jordan"); *id.* ¶ 381 ("The February 2013 stop work order hit CENTCOM hard. All communications between CENTCOM and Kuwaiti Military command were disrupted."); *id.* ¶ 423 ("After the stop-work order issued, [relator] Skili advised the Captain of TOC that he could not work. The TOC Captain was upset by the disruption"). A "forced labor" claim is inconsistent with allegations that relators were unable to work and such interruptions adversely impacted GLS's performance of its contracts.

"discretionary act" under Nigerian law because, *inter alia*, the SEC failed "to plead the Nigerian law or policy that so provides").

Moreover, "when considering whether an employer's conduct was sufficiently serious to coerce the victim to provide labor or services against her will, [a court] must also consider the particular vulnerabilities of a person in the victim's position." *Muchira*, 850 F.3d at 618 (quotation marks and citations omitted). As such, forced labor claims under the TVPRA typically involve circumstances such as:

> squalid or otherwise intolerable living conditions, extreme isolation (from family and the outside world), threats of inflicting harm upon the victim or others (including threats of legal process such as arrest or deportation), and exploitation of the victim's lack of education and familiarity with the English language, all of which are "used to prevent [vulnerable] victims from leaving and to keep them bound to their captors."

Muchira, 850 F.3d at 618-19 (quoting *United States v. Callahan*, 801 F.3d 606, 619 (6th Cir. 2015)). None of these circumstances have been pled here. Relators are highly-skilled and sophisticated individuals, who all spoke English (as it was a job requirement) and held security clearances. *See* FAC ¶ 5. While conditions may not have been ideal, relators knew what they signed up for when they agreed to travel to the Middle East and work in active combat zones. Indeed, several relators had previously worked in the Middle East as linguists, *see, e.g., id.* ¶ 242, and most of the relators signed multiple employment agreements to continue working in these conditions, *see, e.g., id.* ¶¶ 283-289. Relators now improperly seek to recast their employment as a "forced labor" scheme. *See Panwar v. Access Therapies, Inc.*, No. 12-CV-619, 2015 WL 1396599, at *3 (S.D. Ind. Mar. 25, 2015) ("While Plaintiffs continually refer to their employment with Access Therapies and RN Staff as a 'forced labor scheme,' the fact that they voluntarily entered into the employment contracts belies this characterization. There is no evidence that Mr. Panwar or Mr. Agustin were coerced or deceived into signing the employment

agreements with Defendants."); *Muchira*, 850 F.3d at 620 (rejecting forced labor claim where, *inter alia*, plaintiff "was able to read the contract for her employment in the United States, she reviewed the terms of the contract with [her employer] before signing it, and she came to the United States voluntarily with full knowledge" of the contract's terms). Despite recharacterizing the nature of their employment, relators cannot change the fact that they were highly compensated employees—not "slaves"—and have thus failed to state a TVPRA claim.[30]

VIII. CONCLUSION

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

Dated: February 15, 2018

Respectfully submitted,

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[30] Notwithstanding relators' failure to state a TVPRA claim, relators erroneously seek restitution under the mandatory restitution provision of the TVPRA. *See* FAC ¶ 556. That provision, however, applies only to ***criminal*** cases, and is thus not a proper basis for relief in a civil action. *See, e.g.*, *In re Sealed Case*, 702 F.3d 59, 66 (D.C. Cir. 2012) ("Because the appellant *pleaded guilty* to 18 U.S.C. § 1591, the district court was required to impose restitution under 18 U.S.C. § 1593.") (emphasis added); *United States v. Fu Sheng Kuo*, 620 F.3d 1158, 1164 (9th Cir. 2010) ("Section 1593 applies . . . *only* to cases in which a defendant has been *convicted* of an offense under the Trafficking Act.") (first emphasis in original).

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
GREENBELT DIVISION

UNITED STATES OF AMERICA *ex rel.* ELGASIM MOHAMED FADLALLA, *et al*.	)	
Plaintiff-Relators,	)	
v.	)	Case No. 8:15-cv-01806-PX
DYNCORP INTERNATIONAL LLC, *et al*.,	)	
Defendants.	)	

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS FIRST AMENDED COMPLAINT BY DEFENDANT KMS SOLUTIONS, LLC

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendant KMS Solutions, LLC ("KMS") submits this memorandum of law in support of its motion to dismiss all claims against it for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6).

PRELIMINARY STATEMENT

The Amended Complaint fails to state a claim against KMS. The Amended Complaint relies on deficient group pleading, and it does not contain a single factual allegation that KMS itself engaged in any wrongful act or omission. The Amended Complaint alleges only that KMS employed one Relator in the United States from March 2010 through November 2011. The Amended Complaint, however, is based on alleged violations that occurred while the Relators were working in the Middle East. All other allegations against KMS are made through improper grouping of KMS as part of the "Small Business Defendants" group, even though the Amended Complaint does not allege a conspiracy, and there is no allegation that KMS had any relationship whatsoever with the other members of the group. Indeed, in their original Complaint, Relators

did not file any claims against KMS. Instead, Relators later add KMS as a defendant, but did not substantively change any allegations related to the Small Business Defendants or allege that KMS had any involvement with the other group members. KMS is not legally responsible for the alleged "schemes" carried about by this group.

Further, KMS joins and adopts the Motions to Dismiss filed by Defendant Global Linguist Solutions, LLC ("GLS") and Defendant AECOM National Security Programs, Inc. For the reasons set forth in those Motions, the Amended Complaint should be dismissed because: (1) it failed to plead a specific false statement at issue, how the statement was false, that was it was material, that it was made with scienter, or that GLS failed to perform under the contracts; (2) it improperly pled fundamental facts "upon information and belief"; (3) it failed to plead an actual false small business certification or claim for payment and failed to plead with the required particularity; (4) it failed to sufficiently plead a reverse false claim; (5) its causes of action were publically disclosed and relators are not an original source; (6) its causes of action are barred by the statute of limitations; and (7) it should be dismissed with prejudice because amendment would be futile.

For these reasons, the Amended Complaint should be dismissed against Defendant KMS Solutions, LLC in its entirety.

FACTS ALLEGED AGAINST KMS

While the Amended Complaint spans 116 pages with 593 paragraphs of allegations, only 7 paragraphs directly mention KMS, with 5 of them referring to KMS in a group context. (Am. Compl., ¶¶1, 2, 7, 8, 54, 438, 499.) The remaining two factual allegations Relators make against KMS are:

> 54. KMS is a Virginia limited liability company that holds itself out as a minority and woman-owned business enterprise dedicated to

> providing consulting and technical services to commercial and Government clients. On information and belief, per agreement between GLS and KMS, GLS represented KMS to INSCOM as a woman- and minority-owned small business that would participate in performance of Contract 1 consistent with its small business set-aside requirements as a bona fide, independent subcontractor of GLS, in conformity with Contract 1's small business set-aside requirements.
>
> . . .
>
> 438. GLS then assigned Kabbaj to "work" for KMS. Kabbaj was listed as a KMS employee from March 2010 through November 2011, when Kabbaj decided to return to the U.S. to take time away from the battle field in Iraq.

(Am. Compl., ¶¶54, 438.)

Thus, any liability against KMS must be founded on Relators' allegation that: (1) KMS employed Defendant Kabbaj from March 2010 through November 2011; and (2) Defendant Kabbaj was hired to work in the United States "to take time away from the battle field in Iraq." (Am. Compl., ¶438.) The Amended Complaint, on the other hand, is predicated upon the submission of false claims in relation to a contract providing foreign language linguistic, interpretation, and translation services in the Middle East to support the United States Army and other agencies supporting Operation Iraqi Freedom.[1] (*See* Am. Compl., ¶¶3; *id.* at 5 ("Among their many tasks, Relators accompanied U.S. military forces into combat, assisted in the translation of captured enemy documents, assisted in the interrogation of prisoners, and served as liaisons between U.S. troops and foreign nationals, including foreign national military forces.").)

In addition to those two allegations, the Amended Complaint improperly attempts to group KMS with the "Small Business Defendants," (*see, e.g.*, Am. Compl., ¶¶ 7-8), without

[1] The Amended Complaint also contains allegations related to a second contract identified as "Contract 2," but the Relators concede that the allegations against KMS relate to only "Contract 1"–Contract No. W911W4-08-D-0002, awarded to GLS on or about December 5, 2007. (*See* Am. Compl., ¶¶2, 7, 8, 54.)

identifying any specific conduct by KMS, and asserting that KMS is legally responsible for the alleged "schemes" carried about by the group. The Amended Complaint fails to allege any False Claims Act conspiracy, including any conspiracy between KMS and any other defendant. In fact, the allegations only against the Small Business Defendants group are actually allegations against Defendant Shee Atika. (*See, e.g.,* Am. Compl., ¶¶87-90.) However, as Defendant Shee Atika is alleged to no longer be an active entity, Relators attempt to improperly impose those allegations on other entities, such as KMS, who have no alleged connection with Shee Atika or any of the other Small Business Defendants, or the factual predicate for those allegations. (*See* Am. Compl., ¶50.)

Further, in addition to failing to allege any relationship between KMS and Shee Atika or any other Small Business Defendant, the allegations against Shee Atika and the other Small Business Defendants are very different and cannot be imposed on KMS, who is alleged to have employed only Relator Kabbaj for a limited period of time and in the United States. In contrast, the other Small Business Defendants are alleging to have hired multiple employees for extended periods of time and, importantly, for work providing linguist services in the Middle East. (*See, e.g.*, Am. Compl., ¶210.)

In addition to the Amended Complaint seeking to impose liability on KMS through improper group pleading, Relators seek to impose liability in each of the causes of action for actions allegedly taken by others. The Amended Complaint fails to plead even generally — much less with particularity — KMS's involvement in or assistance with the unlawful conduct.

For example, Count IV relates to human trafficking and immigration violations, yet there is no allegation that KMS or the Small Business Defendants were involved in any such actions. (*See* Am. Compl., ¶¶548-93.) Similarly, Counts I-III allege a variety of False Claims Act

violations. Relators decided on a kitchen-sink approach, throwing in any and all possible allegations into broad, all-inclusive causes of actions and allege them against all Defendants, even when the Amended Complaint concedes that they do not apply to KMS. (*See* Am. Compl., ¶¶503-6, 532 (alleging illegal "sponsor payments"); 507-14, 516-18, (alleging GLS human trafficking violations); 515, 519-20, 522, 533-34, 542 (alleging violations in relation to Contract 2); 531, 535, 543 (allegations relating to pre-2009 conduct).)

ARGUMENT

A. Standard of Review

"'To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.'" *Hughes on behalf of Hughes v. Bank of Am. Nat'l Ass'n*, 697 Fed. Appx. 191, 192 (4th Cir. 2017) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). "'A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.'" *Id.* "However, the court need not accept as true legal conclusions, elements of a cause of action, bare assertions devoid of further factual enhancement, unwarranted inferences, unreasonable conclusions, or arguments." *Hughes on behalf of Hughes v. Bank of Am. Nat'l Ass'n*, 697 Fed. Appx. 191, 192 (4th Cir. 2017) (citations, internal alterations, and quotation marks omitted).

The complaint must give each defendant fair notice of what the plaintiff's claim is and the ground upon which it rests. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). "To survive a motion to dismiss, Relators' factual allegations, taken as true, must 'state a claim to relief that is plausible on its face.'" *Hall v. DIRECTV, LLC*, 846 F.3d 757, 765 (4th Cir. 2017) (citations omitted).

Where allegations are made against a group of defendants, generalizations as to the group are insufficient to satisfy the pleading standards. *See Twombly*, 550 U.S. at 565 n.10 ("[T]he complaint here furnishes no clue as to which of the four [defendants] (much less which of their employees) supposedly agreed."); *Atuahene*, 10 Fed. Appx. 33, 34 (2d Cir. 2001) (dismissing complaint under Rule 8 because plaintiff "lump[ed] all the defendants together in each claim and provid[ed] no factual basis to distinguish their conduct"). The prohibition on group pleading applies at least with equal force where a group of defendants is subject to allegations of fraud. "In addition to meeting the plausibility standard of *Iqbal*, fraud claims under the Act must be pleaded with particularity pursuant to Rule 9(b) of the Federal Rules of Civil Procedure." *United States ex rel. Nathan v. Takeda Pharmaceuticals N. Am., Inc.*, 707 F.3d 451, 455 (4th Cir. 2013).

"The multiple purposes of Rule 9(b), namely, of providing notice to a defendant of its alleged misconduct, of preventing frivolous suits, of eliminat[ing] fraud actions in which all the facts are learned after discovery, and of protect[ing] defendants from harm to their goodwill and reputation, are as applicable in cases brought under the Act as they are in other fraud cases." *Id.* at 456 (internal citation, alterations, and quotation marks omitted). To satisfy Rule 9(b), a plaintiff must, "'at a minimum, describe the time, place, and contents of the false representations, as well as the identity of the person making the misrepresentation and what he obtained thereby.'" *United States ex rel. Grant v. United Airlines Inc.*, 912 F.3d 190, 197 (4th Cir. 2018) (citations omitted). "Rule 9(b)'s heightened pleading standard requires that plaintiffs connect the dots . . . between the alleged false claims and government payment." *Id.* at 199. "[A]n FCA plaintiff may not merely describe a private scheme and then 'allege simply and without any stated reason for his belief that claims requesting illegal payments must have been submitted, were likely submitted or should have been submitted to the Government.'" *Id.* (citation omitted).

B. The Amended Complaint's Group Pleading Fails to Satisfy Rule 8 and Rule 9(b)

Relators' deficient group pleading permeates every element of their claims against KMS. KMS is alleged to be a member of the "Small Business Defendants," (Am. Compl. ¶8), but there is no specific factual allegation that KMS itself engaged in any specific act as part of or on behalf of the group.

The procedural history of this matter demonstrates this understanding. In their original Complaint, Relators did not file any claims against KMS. (DKT No. 9-1.) Despite this, the original Complaint had the same claims and allegations against the Small Business Defendants, which included the same members, except for KMS. (*See, e.g.*, DKT No. 9-1 at 13.) In amending its Complaint, Relators simply added KMS to be a member of the Small Business Defendant group, despite having no allegations tying or otherwise involving KMS with the other members of the group. (DKT No. 9-1.) In doing so, Relators sought to add KMS to the matter without having any actual allegations against KMS, instead hoping to drag KMS through a costly and extensive discovery process and fishing expedition. This is a textbook example of what is prohibited by the Rule 9(b) particularity requirement. *See United States ex rel. Nathan v. Takeda Pharmaceuticals N. Am., Inc.*, 707 F.3d 451, 456 (4th Cir. 2013) ("The multiple purposes of Rule 9(b), namely, of providing notice to a defendant of its alleged misconduct, of preventing frivolous suits, of eliminat[ing] fraud actions in which all the facts are learned after discovery, and of protect[ing] defendants from harm to their goodwill and reputation, are as applicable in cases brought under the Act as they are in other fraud cases.") (internal citation, alterations, and quotation marks omitted)).

As these group pleading allegations do not meet the pleading standards required under Rule 8 or Rule 9(b), they should be disregarded. They cannot serve as a basis for imposing liability.

C. The Amended Complaint Fails to Allege Under Rule 9(b) Any Conduct for Which KMS Could Have Liability

In addition to their impermissible group pleading, Relators allege only that (1) KMS employed Defendant Kabbaj from March 2010 through November 2011; and (2) Defendant Kabbaj was hired to work in the United States "to take time away from the battle field in Iraq." (Am. Compl., ¶438.) There simply is no allegation that KMS, who only employed Defendant Kabbaj in the United States from March 2010 through November 2011 "to take time away from the battle field in Iraq," engaged in any of the alleged fraud taking place in the Middle East for a contract to provide services in the Middle East. (Am. Compl., ¶5 ("Relators worked for GLS under Contract 1 and/or Contract 2 as security-cleared linguists, translators and interpreters for U.S. military and intelligence-gathering operations in the Middle East. Among their many tasks, Relators accompanied U.S. military forces into combat, assisted in the translation of captured enemy documents, assisted in the interrogation of prisoners, and served as liaisons between U.S. troops and foreign nationals, including foreign national military forces.").) Indeed, Relators allege that only after Defendant Kabbaj's employment with KMS ended did he return to the Middle East. (Am. Compl., ¶440 ("On October 13, 2012, GLS flew Kabbaj from the U.S. to Kuwait to work as a linguist.").) As a result, employing Defendant Kabbaj for a limited period of time in the United States cannot form the basis of any False Claims Act liability for KMS in relation to contracts performed in the Middle East.

Further, even if the limited employment of Defendant Kabbaj could form the basis of theoretical liability of KMS, it cannot support the causes of action as pled. The first three causes

of action plead False Claims Act causes of action. However, they are kitchen-sink causes of action, with the majority of the allegations therein, not applicable to KMS. For example, Counts I-III allege violations based on illegal "sponsor payments" GLS made to a company called "Alshora." (*See* Am. Compl., ¶¶503-6.) These allegations relate to a contract alleged to be entered into on December 9, 2009 between GLS and Alshora – before KMS's employment of Defendant Kabbaj. (*See* Am. Compl., ¶124.) The Amended Complaint is also clear that this is an allegation against GLS, and is not an allegation against KMS or the Small Business Defendant group. (*See, e.g.,* Am. Compl., ¶133.) Yet, Relators plead this cause of action against KMS, even though it has not plead any underlying facts against KMS related to it or plead a conspiracy court.

Similarly, Counts I-III allege violations of human trafficking and immigration regulations. (*See* Am. Compl., ¶¶507-14, 516-18, 532.) Again, the allegations against KMS are related to work Relator Kabbaj performed in the United States, so KMS could not have committed human trafficking and immigration violations in the Middle East. Additionally, Counts I-III allege violations in relation to Contract 2 – a contract in which KMS is not alleged to have any involvement in. (*See* Am. Compl., ¶¶515, 519-20, 522, 533-34, 542.) Finally, Counts I-III also allege violations from conduct that occurred in 2009 or earlier, including Congressional hearings, which is before the alleged employment of Mr. Kabbaj in March 2010. (*See* Am. Compl., ¶¶531, 535, 543.)

As it is uncontested that the allegations in Counts I-III are unrelated to any allegations against KMS, those counts must be dismissed against KMS. Count IV must similarly be dismissed because it solely relates to human trafficking and immigration violations, yet there is

no allegation that KMS or the Small Business Defendant group were involved in any such actions. (*See* Am. Compl., ¶¶548-93.)

Conclusion

For all of these reasons, the Amended Complaint should be dismissed against Defendant KMS Solutions, LLC in its entirety.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 15, 2019, I caused the foregoing Defendant KMS Solutions, LLC's Motion to Dismiss First Amended Complaint and supporting Memorandum to be electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of the filings to all counsel of record.

/s/ Mitchell A. Bashur
Mitchell A. Bashur

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
GREENBELT DIVISION

UNITED STATES OF AMERICA, *ex rel.* ELGASIM MOHAMED FADLALLA, *et al.*,	)	
Plaintiffs,	)	
v.	)	**Case No. 8:15-cv-01806-PX**
DYNCORP INTERNATIONAL LLC, *et al.*,	)	
Defendants.	)	

MEMORANDUM IN SUPPORT OF
THOMAS/WRIGHT, INC.'S MOTION TO DISMISS

Defendant, Thomas/Wright, Inc. ("T/WI"), by counsel, respectfully submits this Memorandum in Support of its Motion to Dismiss ("Motion") all claims against it in the Relators' First Amended Complaint with prejudice.

I. SUMMARY

For two principal reasons, the First Amended Complaint against T/WI should be dismissed with prejudice. First, Relators have failed to allege any facts to state a claim against T/WI for violation of the False Claims Act ("FCA") or the Trafficking Victims Protection Reauthorization Act ("TVPRA"). The few allegations against T/WI in the First Amended Complaint are conclusory and utterly devoid of the particularity required by Rule 9(b) of the Federal Rules of Civil Procedure. Second, Realtors' claims are barred because they are based on publicly disclosed information, and/or by the statute of limitations.

For these and other reasons discussed in greater below, the First Amended Complaint against T/WI should be dismissed with prejudice.[1]

II. ALLEGATIONS PERTINENT TO T/WI'S MOTION TO DISMISS

Relators allege Defendant GLS was the prime contractor on two government contracts – referred to as "Contract 1" and "Contract 2" – issued by the U.S. Army Intelligence and Security Command ("INSCOM"). *Id.*, ¶ 2. They allege Contract 1 was awarded to GLS on or about December 5, 2007. *Id.* Relators further allege that T/WI was a subcontractor to GLS on Contract 1. *Id.* There is no allegation that T/WI was a subcontractor on Contract 2, or had any involvement whatsoever with Contract 2.

Realtors Magi, Al-Safar, Luttfi and Antar allege that during the period of time they worked for GLS in Iraq, GLS required them to sign employment contracts with T/WI. First Amended Complaint, ¶¶ 260-261, 278, 291, 297, and 323. They are the only Realtors that GLS allegedly directed to sign employment contracts with T/WI. The alleged duration of the employment contracts with T/WI are as follows:

- Relator Magi: February 19, 2010 – May 13, 2011. *Id.*, ¶¶ 260 and 262.
- Relator Al-Safar: April 2010 – May 2011. *Id.*, ¶¶ 278-279.
- Relator Luttfi: November 8, 2008 – June 20, 2011. *Id.*, ¶ 297.
- Relator Antar: The duration of his employment contract with T/WI is not alleged.

Relators allege they worked as linguists, interpreters and translators based in Kuwait for GLS. *See* First Amended Complaint, ¶ 16. Their TVPRA claims allegedly occurred while they were employed in Kuwait by Defendant GLS. *Id.*, ¶¶ 120, and 182-187. There is no allegation T/WI employed, or had control over, any Relator in Kuwait.

[1] T/WI joins and adopts the Motions to Dismiss and supporting Memoranda filed by Defendants Global Linguist Solutions, LLC ("GLS"), AECOM National Security Programs, Inc. ("AECOM"), and KMS Solutions, LLC ("KMS") and incorporates them herein by reference.

Realtors allege that the purported false claims under Contract 1 consisted of "misrepresentations in GLS's bid for Contract 1; overbilling on Contract 1 based on knowing misrepresentations regarding contract performance; misrepresentation of the *bona fides* of Shee Atika, Invizion, TigerSwan, Wright, and KMS as small businesses, and small disadvantaged businesses for purposes of contract award, performance and payment; false representations to the U.S. that GLS was in compliance with Kuwaiti immigration and labor laws in order to receive payment under Contract 1; and continuous false representations to the U.S. that GLS was in compliance with the TVPRA, 18 U.S.C. §1581 *et seq*., to the prejudice of Relators and in violation of requirements for payment under Contract 1." First Amended Complaint, ¶ 7. There is no allegation T/WI helped prepare or submit any proposals, invoices, claims or certifications under Contract 1.

With regard to Contract 2, Relators allege that, [b]ut for GLS's misrepresentations concerning its performance of Contract 1, the U.S. would not have awarded Contract 2 to GLS." First Amended Complaint, ¶ 9. There is no allegation T/WI helped prepare or submit any proposals, invoices, claims or certifications under Contract 2.

III. STANDARD OF REVIEW

When considering a motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, the Court determines whether the complaint includes facts sufficient to state a claim for relief that is plausible on its face. *See*, *e.g.*, *Bell Atl. Corp. v. Twombly,* 550 U.S. 544, 555 (2007); and *Ashcroft v. Iqbal,* 556 U.S. 662, 678-79 (2009). To meet this standard, plaintiffs bear the burden to plead facts to support each element of their claims. *McCleary-Evans v. Maryland Dep't. of Transp., State Highway Admin.,* 780 F.3d 582, 585 (4th Cir. 2015).

The Court accepts as true all well-pleaded factual allegations. *Philips v. Pitt Cty. Mem. Hosp.*, 572 F.3d 176, 180 (4th Cir. 2009). The Court, however, does not accept conclusory

statements. *See Iqbal,* 556 U.S. 678-79; and *Giarratano v. Johnson,* 521 F.3d 298, 302 (4th Cir. 2008). "Moreover, the court 'need not accept the [plaintiff's] legal conclusions drawn from the facts,' nor need it 'accept as true unwarranted inferences, unreasonable conclusions, or arguments.'" *Wahi v. Charleston Area Med. Ctr., Inc.*, 562 F.3d 599, 616, n. 26 (4th Cir. 2009), quoting, *Kloth v. Microsoft Corp.*, 444 F.3d 312, 319 (4th Cir. 2006) (internal quotation marks omitted).

A complaint alleging FCA violations must meet the heightened pleading requirements of Rule 9(b) by stating with particularity the circumstances constituting the alleged false claim. *See*, *e.g.*, *U.S. ex rel. Nathan v. Takeda Pharm. N. Am., Inc.,* 707 F.3d 451, 456 (4th Cir. 2013). In order to meet Rule 9(b)'s requirements, plaintiffs must, "'at a minimum, describe the time, place, and contents of the false representations, as well as the identity of the person making the misrepresentation and what he obtained thereby.'" *United States ex rel. Grant v. United Airlines Inc.*, 912 F.3d 190, 197 (4th Cir. 2018). "This heightened pleading requirement serves to protect defendants' reputations from baseless accusations, eliminate meritless suits brought only to extract a settlement, discourage fishing expeditions, and provide defendants with enough information about a plaintiff's allegations to mount a defense." *Maguire Financial, LP v. Powersecure Intl., Inc.*, 876 F.3d 541, 546 (4th Cir. 2017).

"When a complaint alleges fraud against multiple defendants, Rule 9(b) requires that the plaintiff identify each defendant's participation in the alleged fraud." *Haley v. Corcoran*, 659 F. Supp.2d, 714, 721 (D. Md. 2009), citing, *Adams v. NVR Homes, Inc.*, 193 F.R.D. 243, 250 (D. Md. 2000). "[C]onclusory assertions that one defendant controlled another, or that some defendants are guilty because of their association with others, do not inform each defendant of its role in the fraud and do not satisfy Rule 9(b)." *Kolbeck v. LIT America, Inc.*, 923 F. Supp. 557, 569 (S.D.N.Y. 1996). *See also* Twombly, 550 U.S. at 565, n. 10; and *Adams,* 193 F.R.D. at 250.

Similarly, when FCA liability is asserted against a corporate entity, the element of scienter cannot be established the corporation's "collective knowledge." Rather, there must be sufficient proof that "a particular employee or officer acted knowingly." *United States v. Fadul*, No. 11-cv-0385-DKC, 2013 U.S. Dist. LEXIS 27909, at *29 (D. Md. Feb. 28, 2013).

IV. DISCUSSION

Realtors' claims are alleged in four counts, each asserted "Against All Defendants." As noted above, "Rule 9(b) requires that the plaintiff identify each defendant's participation in the alleged fraud." *Haley*, 659 F. Supp.2d at 721. Furthermore, a plaintiff must identify the particular person who knowingly made a misrepresentation and what was obtained as a result. *United States ex rel. Grant*, 912 F.3d at 197.

Despite the First Amended Complaint's inflammatory verbosity, Realtors have failed completely to meet their obligations under Rule 9(b). Instead of alleging with particularity what T/WI purportedly did, Realtors improperly try to impose liability on T/WI based on conclusory allegations that "Defendants" or "Small Business Defendants" presented false claims and engaged in human trafficking. *See* First Amended Complaint, ¶¶ 7-8. These conclusory and scurrilous claims against T/WI should be dismissed with prejudice to protect it from baseless accusations and unnecessary litigation expense. *See Maguire Financial, LP*, 876 F.3d at 546.

A. COUNTS I, II AND III FAIL TO STATE ANY CLAIMS AGAINST T/WI

Count I asserts "Defendants" presented false claims for payment under Contract 1 and Contract 2 in alleged violation of 31 U.S.C. § 3729(a)(1)(A). *See* First Amended Complaint, ¶¶ 489 and 522. Count II asserts "Defendants" used "false records or statements to get false or fraudulent claims paid or approved by the U.S. Government, in violation of 31 U.S.C. §3729(a)(1)(B)." *Id.*, ¶ 525. Count III asserts "Defendants" presented "false claims to avoid the forfeiture of GLS's contracts with the U.S., and thereby, the forfeiture of the payments it

received from the U.S. under Contracts 1 and 2, thus constituting reverse false claims," in alleged violation of 31 U.S.C. §3729(a)(1)(G). *Id.* at ¶ 542.

Realtors have failed, however, to allege any facts that T/WI knowingly or otherwise presented any false claim. Among other things:

- There is no allegation T/WI was involved in the submission of any proposals, invoices, claims or certifications under Contract 1.
- There is no allegation T/WI had any involvement whatsoever with Contract 2.
- There is no allegation identifying a specific employee of T/WI who purportedly knowingly made an alleged false statement or misrepresentation.
- There is no allegation T/WI conspired with any other Defendant to submit false claims.

Relators' allegations show not only that they failed to meet the specificity requirements of Rule 9(b), but also that they are unable to do so. The foundation of Relators' claims is not based on facts, but rather, on their repeated assertion of allegations based "upon information and belief" about actions allegedly taken by Defendants other than T/WI. *See*, *e.g.*, First Amended Complaint, ¶¶ 117, 119, 124, 133, 185-187, 486, 491, 526-528, 532, and 584.

In short, Relators have not, and cannot, meet their burden to allege facts to state a FCA claim against T/WI. Therefore, their claims against T/WI in Counts I, II and III should be dismissed with prejudice.

B. COUNT IV FAILS TO STATE A CLAIM AGAINST T/WI

Count IV asserts "Defendants" violated the TVPRA, 18 U.S.C. § 1581, *et seq.*, because of actions allegedly taken by GLS when Realtors worked in Kuwait. *Id.*, ¶¶ 592-593. There is not a single allegation that T/WI employed any Relator in Kuwait. There is not a single allegation that T/WI had any involvement with, or responsibility for, the work conditions that

Relators allegedly encountered in Kuwait. Indeed, in the approximately fifty-three paragraphs that allege trafficking in violation of the TVPRA (*see* First Amended Complaint, ¶¶ 507-514, and 549-593), T/WI's name is never mentioned.

As with their FCA claims, Relators have not, and cannot, meet their burden to allege facts to state a TVPRA claim against T/WI. Therefore, their claims against T/WI in Count IV should be dismissed with prejudice.

C. THE AMENDED COMPLAINT IS BARRED BY PRIOR PUBLIC DISCLOSURE AND THE STATUTE OF LIMITATIONS

For the reasons set forth at pp. 25-31 of in the Memorandum of Law filed by GLS in support of its Motion to Dismiss [ECF Doc. No. 85-1], T/WI submits that Relator's claims against it should also be dismissed with prejudice because their allegations were publicly disclosed before they instituted this case and they are not an original source, and because they are barred, at least in part, by the FCA's six-year statute of limitations. *See* 31 U.S.C. § 3731(b)(1).

V. CONCLUSION

For the foregoing reasons, T/WI respectfully moves the Court to dismiss with prejudice all claims against in the First Amended Complaint.

Respectfully submitted,

THOMAS/WRIGHT, INC.

By Counsel:

Dated: March 11, 2019

/s/ Richard O. Wolf

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CERTIFICATE OF SERVICE

I hereby certify that on March 11, 2019, I caused the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of the filings to all counsel of record.

/s/ Richard O. Wolf
Richard O. Wolf