

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION**

| | | |
|--|---|---------------------------------|
| The United States of America |) | |
| |) | |
| |) | |
| Plaintiff, |) | INTERVENOR COMPLAINT |
| v. |) | |
| |) | |
| Covan World-Wide Moving, Inc. |) | CA No.: 3:12-cv-1144-JFA |
| and Coleman American Moving Services, Inc. |) | |
| |) | |
| Defendants. |) | |

The United States of America, by and through the undersigned attorneys, hereby files this Amended Complaint pursuant to the Federal False Claims Act (FCA), 31 U.S.C. §§ 3729 *et seq.*, against Defendants Covan World-Wide Moving Services, Inc. (Covan) and Coleman American Moving Services, Inc. (Coleman), to recover damages and civil penalties arising from Defendants’ conduct in an company-wide billing scheme that has defrauded the United States out of substantial monies by systematically overcharging the United States Armed Forces for the shipping costs arising from the relocation of United States service personnel at home and abroad. Accordingly, the United States hereby states:

Jurisdiction and Venue

1. This action arises under the False Claims Act, 31 U.S.C. §§ 3729-33, as amended, and common-law fraud and unjust enrichment causes of action. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1345, & 1367(a), and 31 U.S.C. § 3730.

2. This Court has personal jurisdiction over all Defendants pursuant to 31 U.S.C. § 3732(a) because Defendants transact business in this District.

3. Venue is proper in this District pursuant to 31 U.S.C. § 3732(a) because the Defendants transact business in this District and numerous acts proscribed by 31 U.S.C. § 3729 occurred in this District.

Parties

4. Plaintiff, the United States of America, is acting through the United States Department of Justice (DOJ); the United States Department of Defense (DOD); and the United States Transportation Command (USTRANSCOM) and the Military Surface Deployment and Distribution Command (SDDC) which, together, run the Defense Personal Property Program (DP3) responsible for relocating the personal belongings of uniformed personnel; the United States General Services Administration (GSA); and the United States Department of Transportation (DOT).

5. Plaintiff-Relator Mario Humberto Figueroa (Mario) began working at Coleman's Augusta, Georgia warehouse in November 2007. On or about June 2008, he became the warehouse manager. As warehouse manager, Mario was responsible for weighing shipping crates, recording the weights, storing shipping crates in the warehouse, and loading crates onto trucks for transport to their outbound destination. Mario also managed between 1 and 5 warehouse employees, including his son, Plaintiff-Relator Elmer Arnulfo Figueroa. The Figuerosas were the employees primarily responsible for the operation of the warehouse. Mario was laid off by Coleman in September 2012.

6. Plaintiff-Relator Elmer Arnulfo Figueroa (Elmer) began working in Coleman's Augusta warehouse on or about June 2009 as a warehouse assistant working under the supervision of his father, Mario. As a warehouse employee, Elmer was responsible for weighing shipping crates, recording the weights, storing shipping crates in the warehouse, and loading

crates onto trucks for transport to their outbound destination. In 2012, Elmer was promoted to the position of warehouse manager and then to his current position as operations manager for the Augusta warehouse.

7. Defendant Covan World-Wide Moving, Inc. (Covan) is a for-profit corporation incorporated under the laws of the State of Missouri with its principle place of business in Midland City, Alabama. Covan provides residential, commercial, international, and government and military moving and shipping services. Upon information and belief, a substantial portion of Covan's business is military relocation shipments. Covan has 50 company-owned offices in 17 states and one U.S. territory. Covan also operates over 200 interstate operating units with another 600 units utilized for local and short-haul activity. Covan also has over 400 agents worldwide as part of its "Covan Carrier Group." Covan conducts substantial business in the State of South Carolina, including sending and receiving shipments through the Port of Charleston and providing moving services to United States service personnel departing from and arriving at military installations in South Carolina as well as service persons stationed in and near South Carolina. Upon information and belief, Coleman and Covan are effectively one and the same company operating in conjunction with numerous subsidiary affiliates.

8. Defendant Coleman American Moving Services, Inc. (Coleman) is a for-profit corporation incorporated under the laws of the State of Georgia with its principle place of business in Midland City, Alabama. Coleman provides residential, commercial, international, and government and military moving and shipping services. An estimated 95% of Coleman's business is military relocations for United States service personnel. Most of the outbound shipments sent from the Augusta facility are shipments containing the personal belongings of United States Army soldiers deployed from Fort Gordon, Georgia and Fort Jackson, South

Carolina. These moving services require Coleman employees to travel to South Carolina to pack the personal belongings of the service member. These shipments are sent to domestic and international locations where United States service personnel serve. Coleman's Augusta warehouse also receives domestic and international shipments from other Coleman facilities and the Covan Carrier Group abroad. These shipments are sent to and received by the Augusta facility through the Port of Savannah, the Port of Charleston, or a port in California. Coleman has 45 other warehouse facilities conducting similar business and operating across the continental United States and Alaska. Coleman is a Covan affiliate and part of the Covan Carrier Group. Upon information and belief, Coleman and Covan are effectively one and the same company operating in conjunction with numerous subsidiary affiliates.

The DP3 Program

9. Since 2001, the United States has deployed its armed forces in significant numbers across the globe, including to the conflicts in Iraq and Afghanistan. This has resulted in multiple deployments and redeployments for the nation's men and women in uniform and required them to move themselves, their families, and their personal belongings from the United States to their assignments overseas.

10. United States service personnel are also frequently relocated among the nation's many service installations pursuant to new assignments, training, or future deployment. This constant relocation of United States' service personnel comes at great cost to the United States and its taxpayers who pay these relocation costs.

11. In order to facilitate these frequent relocations, the United States Transportation Command (USTRANSCOM) and Military Surface Deployment and Distribution Command (SDDC) jointly run the Defense Personal Property Program (DP3) to facilitate the shipment of

service members' household goods, unaccompanied baggage, privately owned vehicles, and other personal belongings.

12. DOD Defense Transportation Regulations, promulgated by the USTRANSCOM, govern the DP3 program. *See* 48 C.F.R. § 47.301–3 (requiring compliance with DOD, Def. Transp. Reg. 4500.9–R.). Generally, these regulations require billing for transportation services based upon the net weight of a shipment as determined by a certified scale and weighmaster. *See id.* § 52.247-11; *see also* 49 C.F.R. § 375.507. A copy of a certified weight certificate must accompany the invoice seeking payment. 48 C.F.R. § 52.247-11.

13. The DP3 program allows transportation service providers (TSP) to bill for services based on a previously-submitted schedule that ties the freight rate of payment to the pounds moved and distance traveled. *See generally*, DOD, Def. Transp. Reg. 4500.9–R.

14. DP3 shipments are transported pursuant to government bills of lading (GBL). *See generally*, GSA, Fed. Mgmt. Reg., Part 102-118 (regulating the use of transportation GBLs). GBLs evidence a contract between the United States and the moving company, such as the Defendants, whereby the moving company offers shipping services for a set cost and the United States accepts.

The False Claims Act

15. The False Claims Act (FCA) provides, in relevant part, that:

any person who--(A) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval; (B) knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim; [...] or (G) knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government,

* * *

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

31 U.S.C. § 3729(a)(1).

16. Any person who conspires to commit a violation of the FCA is also liable to the United States for a civil penalty plus treble damages. Id. § 3729(a)(1)(C).

17. Since at least 2007, Covan, Coleman, and their affiliates have been engaged in an international scheme to defraud the United States Government by making false claims for payment while providing moving services to relocate the possessions of United States service members domestically and abroad.

18. Covan, Coleman, and their affiliates, bill for their moving services based on the weight of the items moved. The Defendants and their affiliates have systematically falsified weight certificates, shipping records, and invoices by increasing shipment weights.

19. These fraudulent invoices, signed by Defendants' employees, contain a certification "that the above bill is correct and just" (or a certification to similar effect) and that other statutory and regulatory requirements were met. These fraudulently-increased invoices are submitted for payment to and paid by the United States.

Defendants' Shipping Business

20. Defendants receive calls soliciting their moving and relocation services. Upon receiving a solicitation, Defendants schedule an appointment to pack the servicepersons' personal belongings.

21. Defendants' employees travel to the serviceperson's home, pack their furniture and personal belongings into large, wooden shipping crates, and load the crates onto trucks. The wooden shipping crates are sealed with government-issued labels and transported back to one of Defendants' warehouse facilities.

22. Once the trucks arrive at the warehouse, they are unloaded. Each crate is weighed and the weight of each crate is recorded on a "weight certificate." The gross weight of each crate is also written directly on the wooden shipping crate in a permanent black marker and circled. Once the crates are weighed and recorded, the crates are moved to a location in the warehouse where they remain until they are sent as part of an outbound shipment.

23. The weight certificate is given to the business office. Using the weight certificate, the business office creates an invoice that charges based on the weight of the shipment as measured in pounds. The higher the net weight of a shipment, the more money is charged to the government for the shipment.

24. The net weight is determined by subtracting the weight of the shipping crate—known as the "tare weight"—from the gross weight. The shipping crates used are standard size crates with standard tare weights.

25. When a shipment reaches its departure date, warehouse employees load the shipment onto a tractor-trailer container. The shipment is picked up by an independent carrier or transported by the Defendants employees. Shipments are either shipped by truck or trucked to a port and loaded onto a freight ship to their final destination.

26. About the same time as the departure date, the business office sends an invoice based on the weights recorded on the weight certificate. Invoices for shipments for military personnel are marked “G/L Account,” or Government Lading Account. These invoices certify that the amount billed to the United States is “correct and just.”

27. Upon information and belief, these invoices are sent from the shipping facility to the carrier. Upon further information and belief, the carrier, in turn, submits the invoices for payment to the United States. Upon information and belief, regardless of the carrier, payment is remitted to the Defendants.

28. Defendants’ warehouse facilities also receive inbound shipments. Inbound shipments are packaged, weighed, and documented by Defendants’ other facilities and sent to a warehouse closest to their final destination. Inbound shipments are processed in nearly the same manner as outbound shipments, but are not reweighed.

The Augusta False Claims Scheme

29. Since at least 2007, the Defendants have engaged in a company-wide, false-claim scheme to defraud the United States by falsifying weight certificates, shipping records, and invoices to increase the weight of shipments in order to receive greater payment than Defendants were entitled to for the services provided.

30. Generally, this scheme is being perpetrated in one of three ways at Coleman’s Augusta facility. First, some correct weight certificates created by the warehouse are destroyed and replaced by a second false document that increases the weight of the crates in the shipment. Second, some weight certificates are not being destroyed but are being altered by “white-ing out” the correct weights and writing over them with higher, false weights. Third, weight certificates

are being altered by replacing the correct tare weight for shipping crates with a false, lower tare weight which results in a higher net weight for the crate.

31. Plaintiffs-Relators are former warehouse employees at Coleman's Augusta, Georgia warehouse facility with personal knowledge of the fraudulent billing scheme perpetrated at the Augusta facility.

32. Coleman management asked Plaintiffs-Relators to create false records and told them that the direction to "get [their] weights up" came from the corporate office.

33. Plaintiffs-Relators first became aware of possible wrongdoing in 2007. At that time, Mario Figueroa was a new employee at the Augusta facility. The general manager of the Augusta facility at that time was named, "Alvin." Alvin told Mario to increase the weight of crates on the weight certificates. Mario refused.

34. Alvin's successor was Ron Niemi (Niemi). Niemi was the general manager from 2008 until September 2011. Niemi also asked Mario to falsify weight certificates by increasing the weights. Again he refused.

35. Niemi was fired by Coleman in September 2011 and replaced by Jay Enger (Enger). Enger and his operations manager, William "Preston" Sunkett (Sunkett), escalated the fraudulent scheme. Sunkett previously worked as warehouse manager but was promoted to operations director by Enger in September 2011.

36. Initially, Niemi, Enger, and Sunkett instructed Plaintiffs-Relators and other warehouse employees to open packed shipping crates and repack them more tightly to increase the density of the shipment and get them into fewer shipping crates prior to pick up by the carrier.

37. Higher density shipments with fewer crates cost less to transport and are billed at a higher per pound freight rate. Repacking already-sealed crates is forbidden because it requires Coleman's employees to open crates without the permission of the owner. Repacking of the contents also requires employees to break the government security seal used to protect a crate from tampering once sealed.

38. While some crates were opened and repacked by other employees as recently as January 2012, Coleman's Augusta management disfavored this scheme because it requires considerable work to open and repack crates.

39. Instead, Coleman's Augusta management adopted a simpler and more direct scheme to increase the company's profits. Instead of repacking crates, Coleman's Augusta management implemented a policy of creating fraudulent weight certificates that systematically increased the weight of shipments.

40. Increasing shipment weights increases the cost of a shipment in two ways. First, it increases the number of billable pounds. Second, it increases the density of a shipment which, in turn, increases the per pound rate.

41. When Plaintiffs-Relators refused to create fraudulent weight certificates, Coleman's managers instructed them to submit the original, accurate weight certificates directly to management. Coleman's managers destroyed the accurate weight certificates created by Plaintiffs-Relators and replaced them with duplicate records that increased the weight for most or all of the crates in a shipment.

42. Coleman's managers also used White-out to alter the gross and net crate weights on original, accurate weight certificates and replace them with higher, fraudulent weights.

43. Coleman's managers also occasionally "whited-out" a crate's tare weight on a weight certificate and replaced it with a lower tare weight. This results in a higher billable net weight.

44. Plaintiffs-Relators both personally witnessed Niemi and Sunkett falsifying weight certificates with "white-out" or by duplicating records. Mario personally witnessed Enger falsifying weight certificates.

45. These fraudulent weight records were then given to the Augusta warehouse facility's office manager who created an invoice requesting payment based on the higher, fraudulent weight.

46. These invoices were sent to the shipment carrier. Following delivery, the carrier submits the invoice to the United States as a claim for payment. Upon information and belief, all or almost all payments made pursuant to these fraudulent invoices are remitted to Covan, as directed by the invoices.

47. Defendants have actual knowledge that these false claims will be submitted to the United States for payment because all of the weight certificates contain the marking "GBL" which means "government bill of lading." The fraudulent invoices likewise contain the marking "G/L Account" which means "government lading account" and account numbers used to bill government accounts.

48. For example, on or about February 15, 2012, the Defendants packed and weighed the personal belongings of service member Christopher Rego at or near Grovetown, Georgia for shipment to Germany. Plaintiffs-Relators weighed the shipment and created a weight certificate for the ten-container shipment reflecting a total gross weight of 12,260 lbs. (net 9,116 lbs.). Defendants' management replaced the accurate weight certificate with a fraudulent document

reflecting a gross weight of 13,205 lbs. (net 10,055 lbs.). An invoice was issued (GBL# CGAT0005381) based on the fraudulent weight certificate that demanded payment for 945 lbs. in excess of the actual (gross) weight.

49. Likewise, on or about March 13, 2012, the Defendants packed and weighed the personal belongings of service member Colin Williams at or near Grovetown, Georgia for shipment to South Korea. Plaintiffs-Relators weighed the shipment and created a weight certificate for the seven-container shipment reflecting a total gross weight of 9,380 lbs. (net 7,140 lbs.). Defendants' management replaced the accurate weight certificate with a fraudulent document reflecting a gross weight of 10,480 lbs. (net 8,240 lbs.). An invoice was issued (GBL# CGAT0005555) based on the fraudulent weight certificate that demanded payment for 1,100 lbs. in excess of the actual weight.

50. As another example, on or about March 13, 2012, the Defendants packed and weighed the personal belongings of service member Spencer Starling at or near Bloomingdale, Georgia for shipment to Hawaii. Plaintiffs-Relators weighed the shipment and created a weight certificate for the ten-container shipment reflecting a total gross weight of 10,350 lbs. (net 7,700 lbs.). Defendants' management replaced the accurate weight certificate with a fraudulent document reflecting a gross weight of 11,210 lbs. (net 8,560 lbs.). An invoice was issued (GBL# CHAT0015735) based on the fraudulent weight certificate that demanded payment for 860 lbs. in excess of the actual weight.

51. After this action was filed, the United States investigated Plaintiffs-Relators' claims. Pursuant to this investigation, the government interviewed Augusta warehouse employees, including the Augusta billing clerk, who confirmed the Augusta facility's practice of creating fraudulent shipping and billing documents.

52. The United States is also in the process of auditing weight certificates and “locator cards” at the Augusta facility. Locator cards are records created by the warehouse staff when shipments are weighed. These records aid the warehouse staff in locating shipments stored in the warehouse. Locator cards report the net weight of a shipment (a total of all the crates included in that shipment) in the top right corner of the record.

53. At the Augusta warehouse, Plaintiffs-Relators created accurate locator cards that reported net shipment weights that corresponded to the weight certificates they created. When Augusta managers replaced the original weight certificates with a fraudulent weight certificate, they failed to also alter or replace the corresponding locator card.

54. This ongoing audit has already revealed 437 examples of weight certificates reporting weights in excess of the corresponding warehouse locator cards.

55. Defendants’ Augusta facility is believed to handle approximately 2,000 shipments annually. Upon further information and belief, approximately 1,200 of these shipments are international crated shipments processed in the manner described above. These approximately 1,200 “international” shipments include shipments to Hawaii and Alaska.

The Company-wide False Claims Scheme

56. The false claims scheme perpetrated at Defendants’ Augusta facility is being replicated at other Covan, Coleman, and affiliate locations as a corporate policy designed to fraudulently increase corporate profits at the expense of the United States. Plaintiffs-Relators learned of the company-wide scheme pursuant to statements by Defendants’ managers.

57. For example, on or about January 2012, Enger, then Coleman’s Augusta general manager, asked Elmer Figueroa to “get [his] weights up.” Enger told Elmer that, “this is the word from the main office.” Elmer understood this to mean that the Defendants instructed their

warehouse managers to falsify documents in order to improve company profits. Elmer was also told “you need to play ball.” Despite this direct pressure from management, Elmer refused to falsify documents.

58. The United States’ investigation has corroborated Plaintiffs-Relators allegations of a company-wide scheme. For example, one of Defendants’ managers explained that a corporate manager instructed him on how to falsify weight certificates by increasing the weights of each crate in a shipment by a small amount in order to increase the freight rate and billable pounds. Upon information and belief, this corporate manager traveled to Defendants’ other locations to provide similar instruction.

59. The government’s investigation has also revealed that the staff at a Joint Personal Property Shipping Office (JPPSO) in Pearl Harbor, Hawaii also became suspicious of the accuracy of shipping weights independent of this action. Pursuant to these suspicions, JPPSO Pearl Harbor began reweighing some shipments sent into Hawaii from shippers across the country.

60. The JPPSO analysis reveals that Defendants and their affiliates consistently overbilled the United States by approximately 9-10% of the actual weight of the shipment.

61. The United States has also reviewed some available reweigh data entered between 2009 and 2013 into the government’s DP3 database. Notably, these shipments originated from 24 different shipping locations operated by the Defendants all across the country.

62. For example, a reweigh of a shipment for Army Major General Anthony G. Crutchfield evidenced an actual shipment weight of 2,601 lbs. less than the weight charged to the United States (GBL# FHAT0005733). This shipment, shipped from Fort Rucker, Alabama to Pearl Harbor, Hawaii, was transported by Coleman American Moving Services, Inc.

63. Likewise, a reweigh of a shipment for Air Force Brigadier General Paul H. McGillicuddy evidenced an actual shipment weight of 1,399 lbs. less than the weight charged to the United States (GBL# BGAC0058035). This shipment, shipped from Alexandria, Virginia to Pearl Harbor, Hawaii, was transported by Covan International, Inc.

64. As another example, a reweigh of a shipment for Petty Officer Talanda Young evidenced an actual shipment weight of 2,174 lbs. less than the weight charged to the United States (GBL# CNNQ0010360). This shipment, shipped from Jacksonville, Florida to Pearl Harbor, Hawaii, was also transported by Covan International, Inc.

65. Out of approximately 650 reweighs of Defendants' shipments reviewed during this period, nearly 80% had a billed weight in excess of the actual shipment weight. Like the JPPSO data, the average increase in shipment weight among the overbilled shipments was approximately 9%.

66. Defendants' false claims scheme has resulted in a substantial loss to the United States and its taxpayers. Since just 2009, Defendants and their affiliates are believed to have billed the federal government for \$723 million worth of shipping and relocation services provided to the nation's uniformed service personnel. This action seeks damages, civil penalties, and disgorgement arising from the fraudulent claims paid pursuant to this scheme.

COUNT I
VIOLATIONS OF 31 U.S.C. § 3729(a)(1)(A) & (B)¹
AGAINST ALL DEFENDANTS

67. The United States realleges and incorporates by reference each of the allegations in the preceding paragraphs as though fully set forth herein.

¹ To the extent wrongdoing occurred prior to May 20, 2009, this Complaint also alleges violations of the Federal False Claims Act prior to its recent amendments *e.g.*, 31 U.S.C. § 3729(a)(1).

68. This is a claim for treble damages and civil penalties under the False Claims Act, 31 U.S.C. § 3729(a)(1)(A) & (B).

69. Defendants knowingly presented, or caused to be presented, false and fraudulent claims for payment or approval to the United States for shipping and relocation services for the relocation of uniformed service personnel and their personal belongings.

70. Said claims were presented with actual knowledge of their falsity, or with reckless disregard or deliberate indifference of whether or not they were false.

71. Defendants' conduct is a violation of 31 U.S.C. § 3729(a)(1)(A) & (B), as amended.

72. When these claims were presented to the United States and paid on behalf of the nation's uniformed service personnel, the United States lacked any knowledge of the falsity or fraudulent nature of Defendants' claims.

73. By reason of these payments, the United States has been damaged in a substantial amount and is entitled to recover an amount in treble damages to be determined at trial, plus a civil penalty of \$5,500 to \$11,000 for each violation. *See* 28 U.S.C. § 3729(a) and 28 C.F.R. § 85.3(a)(9).

COUNT II
VIOLATION OF 31 U.S.C. § 3729(a)(1)(C)²
AGAINST ALL DEFENDANTS

74. The United States realleges and incorporates by reference each of the allegations in the preceding paragraphs as though fully set forth below.

75. Through the acts described above and otherwise, Defendants entered into a conspiracy or conspiracies among themselves and with others to defraud the United States by

² To the extent wrongdoing occurred prior to May 20, 2009, this Complaint also alleges violations of the Federal False Claims Act prior to its recent amendments *e.g.*, 31 U.S.C. § 3729(a)(2).

submitting false claims for payment. Defendants have taken substantial steps in furtherance of those conspiracies, including, but not limited to:

- a. Directing their employees to falsify shipping and billing records,
- b. Adopting policies and/or procedures to facilitate the falsification of shipping and billing records,
- c. Training employees to perpetrate the aforementioned scheme,
- d. Concealing and/or directing their employees to conceal these policies and/or procedures, and
- e. Acting in other such ways as discovered during the trial of this matter.

76. Defendants' conduct is a violation of 31 U.S.C. § 3729(a)(1)(C), as amended.

77. By reason of these payments, the United States has been damaged in a substantial amount and is entitled to recover an amount in treble damages to be determined at trial, plus a civil penalty of \$5,500 to \$11,000 for each violation. *See* 28 U.S.C. § 3729(a) and 28 C.F.R. § 85.3(a)(9).

COUNT III
BREACH OF CONTRACT
AGAINST ALL DEFENDANTS

78. The United States realleges and incorporates by reference each of the allegations in the preceding paragraphs as though fully set forth below.

79. This is a claim for the recovery of monies paid in excess of the agreed and actual price for the services Defendants rendered.

80. By reason of the conduct described above, Defendants materially breached their contractual agreements with the United States whereupon Defendants' compensation was to be

determined with reference to the actual weight of shipments and Defendants were charged with accurately certifying the weight of those shipments to the United States.

81. Defendants breached this agreement by certifying shipment weights for payment in excess of the actual services provided.

82. As a result of these breaches, the United States suffered damages in the amount to be determined at trial.

COUNT IV
UNJUST ENRICHMENT
AGAINST ALL DEFENDANTS

83. The United States realleges and incorporates by reference each of the allegations in the preceding paragraphs as though fully set forth below.

84. This is a claim for the recovery of monies to which Defendants have been unjustly enriched.

85. By obtaining government funds to which Defendants were not entitled, Defendants were unjustly enriched and are liable to account and pay such amounts, or the proceeds therefrom, which are to be determined at trial, to the United States.

COUNT V
FRAUD IN THE INDUCEMENT
AGAINST ALL DEFENDANTS

86. The United States realleges and incorporates by reference each of the allegations in the preceding paragraphs as though fully set forth below.

87. This is a claim for the recovery of monies that the United States was fraudulently induced to pay pursuant to Defendants' misrepresentations that services would be billed for payment pursuant to the actual shipment weights as certified by Defendants.

88. The United States relied on these representations when it agreed to contract with Defendants and performed its end of the bargain by paying claims submitted by the Defendants.

89. Defendants represented that they would accurately bill the United States based on the actual shipment weights. This representation was essential to Defendants being able to contract with the United States and maintain their contractual relationship.

90. The United States was damaged by Defendants' misrepresentations as it would not have entered into or maintained a contractual relationship with Defendants had it known it would not be accurately billed for the services rendered.

COUNT VI
ACCOUNTING, DISGORGEMENT, AND CONSTRUCTIVE TRUST
AGAINST ALL DEFENDANTS

91. The United States realleges and incorporates by reference each of the allegations in the preceding paragraphs as though fully set forth below.

92. This is a claim for disgorgement of profits earned by Defendants because of payments made in excess of the actual weight of the shipments moved.

93. Defendants concealed their false and fraudulent scheme by falsifying shipping and billing documents and providing these false records to the United States as justification for the claims made.

94. The United States did not detect Defendants' illegal conduct.

95. This Court has the equitable power to, among other things, order Defendants to disgorge their ill-gotten profits obtained as a result of their violations of federal statutory, regulatory law, and common law and Defendants' contractual agreement with the United States.

96. By this claim, the United States requests a full accounting of all revenues and disgorgement of all profits (and interest thereon) and/or imposition of a constructive trust in favor of the United States on those profits.

Prayer for Relief

WHEREFORE, the United States requests that judgment be entered in its favor and against Defendants as follows:

- i. On Counts I & II under the False Claims Act for the amount of the United States' damages, trebled as required by law, and such civil penalties as are required by law;
- ii. On Counts III, IV, & V, for breach of contract, unjust enrichment, and fraud in the inducement for the damages sustained and/or the amount Defendants were unjustly enriched;
- iii. On Count VI, for an accounting, disgorgement and/or a constructive trust of all ill-gotten profits;
- iv. An award of interest on the amount recovered by the United States, costs and expenses incurred by the United States related to this action, and such further relief as this Court deems just and proper.

Request for Trial by Jury

The United States demands a trial by jury on all claims so triable.

(SIGNATURE PAGE FOLLOWS)

Respectfully submitted,

WILLIAM N. NETTLES
UNITED STATES ATTORNEY

By: s/ Frances C. Trapp
Frances C. Trapp (#6376)
Assistant United States Attorney
1441 Main Street, Suite 500
Columbia, SC 29201
(803) 929-3058

December 11, 2013