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UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

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UNITED STATES OF AMERICA,  
Plaintiff

CV NO.: 3:12-1144  
Columbia, SC  
February 25, 2014

Ex Rel. MARIO HUMBERTO FIGUEROA  
and ELMER ARNULFO FIGUEROA,

Plaintiffs-Relators

-against-

COVAN WORLD-WIDE MOVING, INC.  
and COLEMAN AMERICAN MOVING  
SERVICES, INC.,

Defendants  
-----

BEFORE HON. JOSEPH F. ANDERSON, JR.  
UNITED STATES DISTRICT COURT JUDGE  
MOTION HEARING

APPEARANCES:

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STENOTYPE/COMPUTER-AIDED TRANSCRIPTION

1 THE COURT: All right. We're here this morning in  
2 the case of United States versus Covan Worldwide Moving.  
3 Defendants have filed a motion to dismiss under Rule 9(b) and  
4 12(b)(6). I read the briefs, I'm prepared to hear from  
5 counsel. Mr. Harris?

6 MR. HARRIS: May it please the court, your Honor. By  
7 way of housekeeping I would like to first introduce some of  
8 the attorneys that will be addressing the court this morning.  
9 To my right is Jim Wyrsh. He has been admitted pro hac vice  
10 by this court, along with Justin Johnson of Mr. Wyrsh's firm.  
11 Also not appearing today but seated behind counsel table, your  
12 Honor, is Jeff Coleman, who is here on behalf of Covan, and  
13 Mr. Bernie Craig who is an attorney out of Florida who is  
14 appearing here today on behalf of Coleman America.

15 THE COURT: All right.

16 MR. HARRIS: Your Honor, as opposed to Mr. Nettles we  
17 would like to reserve ten minutes at the conclusion of the  
18 arguments.

19 THE COURT: I have an executive board meeting of the  
20 Boy Scouts at 12 noon. We have got one hour to hear the  
21 debate in this case. I'll give a half hour per side broken  
22 down anyway you want to do it. I read the briefs and I  
23 quickly looked over this Powerpoint, as well.

24 All right. Who's going to speak for the defendant?

25 MR. HARRIS: Mr. Wyrsh, your Honor.

1 THE COURT: All right. Mr. Wyrsh?

2 MR. WYRSCH: May it please the court. We appreciate  
3 the opportunity to present this motion to dismiss on behalf of  
4 both the defendants in this case, Covan Worldwide Moving and  
5 Coleman American Moving Services, Inc., a Georgia corporation.

6 The first slide we have on the Powerpoint is a  
7 description of the company. This is not to say that we're  
8 necessarily anything other than an internationally known  
9 moving and storage company, but we're 50 offices in 17 states  
10 and one U.S. territory, more than 400 agents throughout the  
11 world.

12 We think this is quite relevant to what is pled in  
13 this case because we believe that the only specific  
14 allegations, which we don't think are sufficient, relate to  
15 the activities, alleged activities, in Augusta, Georgia. And  
16 the complaint filed here by the intervenor complaint seeks to  
17 extend those allegations to all of these various locations  
18 throughout the world.

19 This is a company that has devoted substantial  
20 resources over the years and has a very large presence in  
21 moving and storage for families under the Defense Personal  
22 Property Program, which is known as the DP3. The company has  
23 handled in excess of one million shipments of household goods  
24 for military personnel and the company's quality scores have  
25 been consistently very high from the U.S. military. The

1 company has a code of ethics and holds agents and employees  
2 and affiliates to the highest ethical standards.

3 Our motion to dismiss involves, first of all, counts  
4 one, two, and five of the complaint. I'm sure the court is  
5 aware that the first count has alleged violations of the False  
6 Claims Act and the second count is a similar allegation except  
7 it involves an alleged conspiracy. Count five is the  
8 allegations concerning fraud in the inducement. We believe  
9 that those claims are not pled with the requisite  
10 particularity under Rule 9(b) of the Federal Rules of Civil  
11 Procedure.

12 In addition, count two alleges an intra-corporate  
13 conspiracy. That is plain from the allegations in the  
14 complaint. This court and the Fourth Circuit has clearly held  
15 that the intra-corporate conspiracy doctrine is not viable,  
16 with a couple of exceptions that do not apply here. Count  
17 three, four, and six allege quasi-contractual claims. And we  
18 don't believe under the Iqbal and other cases they have stated  
19 a positive claim, plausible claim of relief under the Rules of  
20 Civil Procedure and the cases interpreting the rule.

21 When I went to law school the Federal Rules of Civil  
22 Procedure, basically if you had hand-drawn a complaint that  
23 provided notice to the other side it was sufficient. Today  
24 that's not what the Supreme Court has said and nor what this  
25 court has said. The factual allegations must be enough to

1 raise a right to relief above a speculative level, the claims  
2 must be plausible and not merely conceivable, material facts  
3 must be accepted as true. The statements of bare legal  
4 conclusions are not entitled to the assumption of truth.

5 I know the court's very familiar with that, I just --

6 THE COURT: I've had a real run of motions to dismiss  
7 lately in cases similar to this and so I'm very familiar with  
8 the law. And, of course, Iqbal and Twombly, as you say,  
9 ushered in a new era of pleading standards. But here they  
10 give you the -- they do give you the who, what, when, and  
11 where for these six shipments, don't they?

12 MR. WYRSCH: Let me address the first three. And the  
13 first three are the allegations concerning Augusta. They are  
14 specific in the sense that they get down to the level of what  
15 they call a GBL number. But under the Fourth Circuit's  
16 opinion in Takeda Pharms., Nathan versus Takeda Pharms. North  
17 America, Inc., I believe, they have to allege that those  
18 claims are presented.

19 If you look at the way they have pled those claims,  
20 they are very careful not to say that. Because I don't think  
21 they either have that information or I don't think that the  
22 information will ever be developed.

23 With respect to the other three claims, those are  
24 claims involving what they call the Hawaii shipments. Those  
25 claims are not false claims on their face, and the reason why

1 they are not false claims on their face is because those  
2 shipments were reweighed by the United States military,  
3 actually a function called the JPPSO, which is Joint Personal  
4 Property Shipping Office, located at Pearl Harbor in Hawaii.  
5 When the shipment is going outbound to Hawaii, military  
6 household goods, the government has a program of reweighing  
7 shipments. In many instances this has to do with a service  
8 member that has, say, an 8,000 pound allotment. The  
9 shipment's 10,000 pounds, they want to make sure that the  
10 shipment is accurate, the weight's accurate, so that the  
11 serviceman does not -- is not going to be charged more than  
12 his allotment.

13 So those three shipments were reweighed. The billing  
14 that went to the government contained the reweigh certificate.  
15 It did not have any false claim to it whatsoever. And the  
16 government suffered no damage.

17 So we're down to three claims. And those claims  
18 under this standard does not -- and they don't say anything  
19 about when they were submitted. And, by the way, we have two  
20 companies that they lump together, which we think is a  
21 violation of the rule, or I'm sorry, the settled case law.  
22 They don't say if either one of these companies submitted a  
23 claim.

24 And I know the court's very familiar with this case,  
25 but the Fourth Circuit has held, 2013, where the defendant's

1 actions are as alleged -- I'm reading here, I'm not sure, two  
2 star 13, when the defendant's actions as alleged are  
3 reasonably inferred from the allegations, could have led but  
4 need not necessarily have led to the submission of false  
5 claims, a relator must allege with particularity the specific  
6 false claims actually were presented to the government for  
7 payment. They do not allege that these two corporations  
8 actually presented those Augusta claims to the government.

9 Now, we understand that there are some specifics that  
10 are alleged with respect to the Augusta claims. But we are  
11 very concerned that they have said that those claims could be  
12 extended out to the worldwide organization, as we stated, to  
13 50 different locations doing worldwide business.

14 The two other allegations that are there and we don't  
15 think support this claim that goes -- certainly not, we don't  
16 think it even as to Augusta, but certainly not beyond Augusta,  
17 one has to do with the reweigh program in Hawaii which they  
18 say involves some 600 shipments which were reweighed. I  
19 understand that we can't get into necessarily what we have  
20 exchanged with the government, but I think it's fair to say  
21 that all of those shipments also did not involve false claims.

22 They were reweighed, the reweigh certificate was sent  
23 to the government and not the original weight certificate. We  
24 believe that those claims cannot be extended to say there's  
25 any fraud because it was never fraud in the first assistance.



1           The second thing that they -- in this regard that  
2 they alleged are some 437 shipments that they say they have  
3 analyzed at Atlanta and found some discrepancies. We don't  
4 believe that's supported, but we understand that we cannot get  
5 into what the actual facts are except what is in the  
6 complaint.

7           But, having said that, there again under this Takeda  
8 case they have to allege that those claims were made by these  
9 defendants, not just lump them together. And they have to say  
10 that those claims were presented to the government and the  
11 government was damaged by a certain amount. They have not  
12 alleged that. They principally rely on a Southern District of  
13 New York case which says we can simply allege a scheme and  
14 it's okay, we don't have to do anything more. But that's not  
15 what the Fourth Circuit has said.

16           THE COURT: That's not what the Fourth Circuit has  
17 said, obviously. There's a more lenient standard that the  
18 Second Circuit has recognized. I've had that come up in  
19 another case recently. The Fourth Circuit has kind of taken a  
20 middle ground approach between the two extremes, I think.

21           MR. WYRSCH: I think that's a fair statement. But I  
22 think the Fourth Circuit is clearly -- and the Fourth Circuit  
23 gets clear that there must be specificity as to the claims and  
24 there must be specificity as to what defendant did what. You  
25 cannot lump, as we understand the law, the clear law in this

1 circuit and other circuits, is that you cannot say the  
2 defendants, the defendant, the affiliates, and so forth. You  
3 have to say this corporation did this at this particular time  
4 and submitted this claim. And the government has not done  
5 that. And for whatever reason --

6 THE COURT: Well, they have given a lot more detail  
7 than I normally see in these cases. They have got the two,  
8 father/son whistleblower team that says they were instructed  
9 to inflate the weights. And they have given you some specific  
10 shipments that they claim were overstated by nine to  
11 ten percent. Isn't that enough to put you on notice of what  
12 you've got to defend against?

13 MR. WYRSCH: No. Because they are not specific as to  
14 what those claims are. They do say they have -- again, I'm  
15 trying to avoid saying what I know the facts to be, which are  
16 contrary to what they say, but they have to say, well, this  
17 manager said this and therefore this happened. And that what  
18 they have alleged is all -- nothing that meets the standards  
19 to put us on notice. Did the manager say do it 20 times, 50  
20 times, five times? And they don't have that specificity. And  
21 that's what --

22 THE COURT: It seems to me all they need is one bad  
23 invoice. One false claim is enough to get past this motion,  
24 isn't it? And we have discovery to see if there are any more.

25 MR. WYRSCH: Because, your Honor, if the court

1 please, the case law says that's not what they are supposed to  
2 do. They are not supposed to file a claim or an intervenor  
3 complaint and then say I'm going to develop it in discovery.  
4 That's what the law is.

5 THE COURT: I agree with you, I agree with you. But  
6 they have at least one here they say, or three probably, they  
7 say that they made sufficient allegations.

8 MR. WYRSCH: Well, it could be one. All right.  
9 Let's assume it's one. But to extend that worldwide to a  
10 corporation that does business that will require them to spend  
11 literally hundreds of thousands of dollars to defend claims  
12 that are not specific.

13 And it's not like they didn't have information.  
14 Okay? They served civil demands and the company spent  
15 literally thousands of dollars supplying them with  
16 information. And yet they come up really with only three  
17 claims that have any specificity whatsoever. And so they say  
18 well, we can file this intervenor complaint, we can allege  
19 this general scheme, we can quote two warehousemen who are not  
20 in the line of management, they don't do the billing, they  
21 don't understand the various relationships between the  
22 companies. They don't understand, in my view anyway, if we're  
23 an origin agent and we're doing business for somebody else  
24 that ships it in that we don't do the weighing, they have not  
25 understood that. They are not in a position to understand it.

1           And so to say that the warehousemen at some time in  
2 2007, a manager said this and that, they have to say again  
3 this -- as a result of what this manager said, this and that,  
4 this claim was made, this claim was made, and this claim was  
5 made. Instead they say well, we have three claims, without  
6 any specificity. So we don't think it's sufficient.

7           Go to the next slide, if we can. Again, some of this  
8 we have already discussed on the defendants' motion to dismiss  
9 so we will skip that. Standard of review, that one, we will  
10 pass that one.

11           Again with respect to what needs to be pled, the  
12 court has already said that, but the courts, Fourth Circuit,  
13 has clearly said, other circuits, that they must say the  
14 circumstances to be pled. Time, place, contents of the false  
15 representations, as well as the identity of the persons making  
16 the representations, what he obtained thereby.

17           We cite the First Circuit case, the Karvelas case,  
18 and this is important, and I know the court knows all this but  
19 I wanted to make mention of this. This lawsuit, this company  
20 is a hundred years old. And under this case, I hope I'm  
21 pronouncing this correctly, the Karvelas case, Rule 9 is to  
22 give notice to the defendants of the plaintiff's claim to  
23 protect the defendants whose reputation may be harmed by  
24 meritless claims of fraud, to discourage strike suits, to  
25 prevent the filing of suits and simply hope to uncover

1 relevant information during discovery. It's exactly this.

2 Now, the next slide, please. The malice, intent, and  
3 knowledge of other conditions, and the court generally as you  
4 already know in Ashcroft versus, I can't pronounce it, Iqbal,  
5 construing that. And also Rule 8 says that excuses a party in  
6 pleading a standard, it does not give him license to evade the  
7 less rigid strictures of Rule 8.

8 Next slide. And I already said this, but the  
9 defendants are alleged to engage in a company-wide false  
10 claims scheme. Where is the information about the 50  
11 locations? They have a brief mention that some of the  
12 shipments in Hawaii are from various locations of Covan.  
13 Which ones? And do they necessarily mean fraud. Some weight  
14 scale could have been off, somebody could have written it down  
15 wrong. It's not necessarily fraud.

16 The next slide. This is another one we have already  
17 gone over, which -- with respect to the shipments at -- the  
18 six shipments that we have already discussed. If we can go to  
19 the next one on the locator cards.

20 I briefly mentioned, your Honor, early on about the  
21 437 shipments they say they have analyzed without specificity  
22 with respect to Augusta and the 650 reweighed shipments from  
23 JPPSO down in Hawaii. I can tell you that we've asked them  
24 for what they say were two databases from JPPSO in Hawaii.  
25 They have not produced either one of those. But they don't

1 want to produce them and they don't want to allege them, but  
2 we want -- they want to sort of have this literally hundreds  
3 thousands of dollars worth of expense to figure out what the  
4 claims are. We don't think that rule makes -- we don't think  
5 that's what the law is under false claims or fraud.

6 Locator cards, if I might mention that to the court.  
7 Locator cards are not used in the billing process, they are  
8 used in the warehouse so when a shipment, such as a  
9 non-temporary storage that's going to be there for while, they  
10 want to figure out where to find it. And so, you know, they  
11 say, well, we can compare locator cards, what the actual  
12 weight certificate is and somehow that's an indication of  
13 fraud. But, well, that's not what the industry standard is.

14 If we go to the next slide. This is something we  
15 have already gone over. So we can go to the intra-corporate  
16 conspiracy doctrine --

17 THE COURT: So you are saying on the modern pleading  
18 standards a plaintiff must plead that all of the submissions  
19 were fraudulent across the board and in no case there is no  
20 room for discovery to explore other violations of a similar  
21 kind with this defendant. Everything has to declared up  
22 front.

23 MR. WYRSCH: I think that's what the law is in the  
24 Fourth Circuit and I think that's what other circuits have  
25 said. And that's what it is. The point being, just from the

1 Karvelas case you cannot -- it's like these plaintiff's  
2 attorneys have filed these security cases and Congress acted.  
3 They call a class action and filed an immediate strike suit  
4 after some unfavorable disclosure of financial information.  
5 That's a strike suit. This is a strike suit. We want to say  
6 that you have a worldwide -- there's a worldwide conspiracy  
7 but we don't have all the information so we're going to make  
8 you spend hundreds of thousands of dollars, maybe even a  
9 million dollars, to defend it, and then they won't come up  
10 with the information. That's just not what the law is. I  
11 mean, it's clear that they have to have the information before  
12 they file the suit.

13 And this intra-corporate conspiracy doctrine is  
14 clear. Their basic defense to that motion to dismiss is that  
15 it is not a defined a motion to dismiss situation, it is an  
16 affirmative defense. We have cited, three, four, five cases  
17 that say that's not so. And that's all they allege. And that  
18 extends not to a corporation conspiring with its officer, it  
19 extends also to the agents of the corporation. Which these  
20 folks and in their complaint are talking about agents of the  
21 corporations, they are talking about managers, they are  
22 talking about employees.

23 THE COURT: I think I might agree with you on this  
24 intra-corporate conspiracy theory. So you said you wanted to  
25 reserve ten minutes. Let me hear what the plaintiffs have to

1 say about that intra-corporate conspiracy theory.

2 MR. WYRSCH: And we do have some on these other  
3 breach of contract claims, and so forth. But I will --

4 THE COURT: All right.

5 MR. WYRSCH: If I can come back on that.

6 THE COURT: I will give you some rebuttal time. Who  
7 is going to speak for the plaintiff?

8 MR. NETTLES: We will concede on it. We will concede  
9 on the intra-corporate.

10 THE COURT: Very good. That shortens this hearing a  
11 little bit. You won the second issue. You want --

12 MR. WYRSCH: I will take -- the other part that we  
13 want to discuss, if the court please, is the counts that deal  
14 with what we consider the contractual claims and the  
15 quasi-contractual claims. These claims -- let's see if I can  
16 get to the slide here.

17 Counts three, four, and six, again, we cited the  
18 District of South Carolina case, Norman Pulliam versus  
19 Patriots Plantation, requires that they have to, number one,  
20 allege with specificity the contracts which defendants are  
21 alleged to have breached and, two, which provisions of the  
22 contracts defendants allegedly breached.

23 There is no such allegations here. It may be  
24 because, and this is with respect, I've dealt with the federal  
25 government for over 40 years and it's not -- this is not in



1 any way respect, but to understand the process by which the  
2 United States government procures the services of a -- for a  
3 movement of household goods by a serviceman is complicated.  
4 And it changes. But fundamental to that, and it goes back to  
5 the Court of Claims and the Dean case, is that each individual  
6 shipment is a contract. So if that's the case, even if you  
7 don't understand that, in order to sue us, or, I'm sorry, in  
8 order for the intervenor complaint to say that there is a  
9 breach of contract they have to have some specificity as to  
10 what contracts are breached.

11 Now, they could say well, okay, maybe we accept what  
12 you are saying, maybe we accept what you are saying but  
13 there's just a lot of these shipments that evolved here and I  
14 know they are separate contracts, but why force us to do it?  
15 And our position, your Honor, is that that's what the law is.  
16 If you say we breached a contract then you need to say what  
17 contracts were breached.

18 And more than that, if we're a worldwide company,  
19 okay, shipping worldwide, if we deal I think in 50 states,  
20 which law applies to this contract? Is it the law of Georgia,  
21 is it the law of South Carolina, is it the law of whatever,  
22 whatever state you want to talk about. If it's a shipment  
23 that originates in Germany does the German law applies? And  
24 somebody might say well, that's, boy, that's really tough to  
25 do at this stage. Well, I understand that. But that's what

1 is required for us to be on notice. It's not necessarily us  
2 saying that we're outraged by all this, because that wouldn't  
3 be proper. But that is to say that if you have built a  
4 company over 100 years and you have literally over a thousand  
5 employees and you have a tremendous investment in equipment,  
6 facility, that if you are going to subject us to spend this  
7 very substantial amount of resources to defend it then you,  
8 government, must allege exactly what we -- what we have done.

9 And there's a purpose to that. The purpose of it is  
10 to say if we're going to accuse you of such things as fraud  
11 and breach of contract then you've got to put us on notice so  
12 that we can look at the data, we can say, okay, we don't agree  
13 with you, or we agree with you. And that's before you file  
14 the suit. And we don't think they have done it, we don't  
15 think they met the standard in this case.

16 THE COURT: All right. I think I understand your  
17 argument. Just about out of time. Let me hear from the  
18 defendants on all these points. Who's going to argue for the  
19 plaintiffs, rather?

20 MR. NETTLES: I will, your Honor.

21 THE COURT: Mr. Nettles.

22 MR. NETTLES: I can start with -- on the rule  
23 12(b)(6) motion, if the court has questions I can start with  
24 that if they do.

25 THE COURT: Go ahead.

1 MR. NETTLES: Well, essentially, if you step back and  
2 try to distill it all down here's what we have got, if we talk  
3 about 12(b)(6). We have told them here are six claims, all  
4 right? These six claims were submitted to the government and  
5 in all six of those claims the weight was off. Now, the  
6 submission was fraudulent.

7 So when we start to look at how did this company come  
8 to make fraudulent submissions we could look to what the  
9 relators have told us as contained in the complaint. And what  
10 I think is interesting, your Honor, is, as is contained in the  
11 complaint, is there are three consecutive managers, three  
12 different times, okay, who all told these relators the same  
13 thing, what we have got to do is increase the weight.

14 Now, that is alleged in the complaint and is very  
15 clear. We named the people, we gave the time frames when they  
16 worked there, and we said that these three individuals at the  
17 Augusta place all told the relators that they wanted them to  
18 increase the weight.

19 Now, what we also see from the complaint is is that  
20 when they refused to do that the actions that those people  
21 took, those managers took, to increase the weight, which  
22 resulted in fraudulent claims.

23 The importance of the locator cards is this, your  
24 Honor, and I think it's in the complaint. When the boxes come  
25 in they get assigned a number when the box is weighed. The

1 other thing they put on there is the weight that's put on  
2 locator cards. That card stays with the shipment. The  
3 importance of the locator card is whenever the search warrant  
4 was issued on Augusta they went in and weighed 400 of them and  
5 they were all off. You know, the weight, the weight that they  
6 had on that their billing information was different from the  
7 locator card. The locator card would have the weight on it  
8 that was put on it when it was actually weighed.

9 THE COURT: So you are saying their own internal  
10 records were inconsistent?

11 MR. NETTLES: Well, they are consist with fraud, but,  
12 right. And in our complaint we -- we show how that fraud took  
13 place. Sometimes it was whited out, sometimes separate sheets  
14 were done. But in Augusta there was fraud going on, and we  
15 laid out exactly who told them and exactly, you know, how it  
16 happened.

17 So the importance of both Hawaii and the other two  
18 databases is this: In Hawaii there's an individual who works  
19 for the federal government whose job is to sort of monitor  
20 this stuff. And since 2009 he's been weighing things. And  
21 what he's found out is, just randomly, and what he finds out  
22 is when he weighs their stuff it's always off by nine to  
23 ten percent. Always. And he's been keeping track of that.

24 Now, what's interesting about Hawaii and what -- the  
25 reason we have that in there is because what that shows, the

1 items that -- that were weighed in Hawaii were not packed in  
2 Hawaii. They were going through Hawaii. Some of them were  
3 from Covan coming from Korea, some of them were Covan coming  
4 from America on their way to Korea. So what this showed is is  
5 that consistently, whether it came from Augusta or not, that  
6 the weight was off.

7 The other two databases that -- the other two  
8 databases the government had when we go back and do a dive on  
9 them show the same thing. The point of the two databases, the  
10 point of Hawaii, when you put that together with Augusta, I  
11 mean, in Augusta we have given them six individual very  
12 particular claims that were fraud, that were presented to the  
13 government for payment. Now --

14 THE COURT: What about his argument that three of  
15 those were reweighed by the government?

16 MR. NETTLES: After the submission was made. So in  
17 other words, the -- and I'm sure we all know it doesn't have  
18 anything to do with the payment. If they make a false claim  
19 it doesn't matter whether it gets paid or not. A mere  
20 submission of a false claim is sufficient to trigger a false  
21 claim action. So they can go back and reweigh them, it  
22 doesn't matter. I mean once the submission is made the false  
23 claim is made. Even if we take those three out they have  
24 still got three they really don't have any answer for. And  
25 all we need is one.

1 THE COURT: Well, their argument seems to be all you  
2 can go forward with is the ones you pled, that you cannot use  
3 the one or two or three as a ways to get in and do discovery  
4 and find out about worldwide.

5 MR. NETTLES: Right. And I think they are relying on  
6 Takeda and on Karvelas, those two cases is what they are  
7 relying on in their brief. And what's interesting in those  
8 two cases are two things. First of all, if you read the  
9 pleading in, well, Karvelas, Garst, and Takeda three cases  
10 they primarily rely on. If you look at Garst, the complaint  
11 that was made there, at the risk of sounding flippant, was  
12 almost like out of a Saturday Night Live skit. I mean the  
13 complaint was they over-promised and under-delivered.

14 The court gave them like four or five -- and every  
15 time the court said, all right, so this is what you've got to  
16 do, this is what you've got to do, essentially teaching that  
17 relator how to do it and at the end of the day he simply could  
18 not plead an articulable -- he couldn't plead an articulable  
19 claim. You know, and so that's all we need is one. We have  
20 got more than one.

21 And when you look at the complaint in total what we  
22 have got is we have got six very articulate ones, we have  
23 got -- we have got three different managers espousing the same  
24 scheme to the same relator, and then we have got, when you  
25 look at the global aspect of it, you see that what is

1 transpiring nation -- worldwide is consistent with what's  
2 happening in Augusta. You know, I won't argue to them but it  
3 would seem to me that if it were the converse, okay, if the  
4 converse was we had some bad claims coming out of Augusta, but  
5 then when you look at worldwide they were all right, you would  
6 have a hard time arguing that it was anything other than  
7 Augusta.

8 But our relators worked in Augusta. They told us  
9 exactly what happened in Augusta. We saw what transpired as a  
10 result of what the management told our relators to do. And  
11 that is consistent with the way their weights are across the  
12 world. And so, you know, we have pled one. And in all  
13 candor, your Honor, I mean, the case law, you know, when you  
14 look at the Takeda case, the problem with Takeda was they  
15 couldn't give one single presentment.

16 That's the problem with Takeda. They knew there was  
17 fraud. The government did not intervene, okay? The relator  
18 in Takeda had a difficult time proving there were any claims  
19 that were fraudulently made. We have done that. So, your  
20 Honor, respectfully, the government has carried that burden  
21 and that we have showed articulable, identifiable claims that  
22 were presented to the government that were false.

23 THE COURT: All right. What about the breach of  
24 contract claims?

25 MR. NETTLES: Well, breach of contract, you know,

1 they chose to do business with the federal government and they  
2 chose to do business all over the world. And, you know, your  
3 Honor, the appropriate forum of law -- there's a body of  
4 federal procurement law and that's what would apply. That's  
5 what would apply, is the federal procurement law.

6 You know, and, you know, we might be in a little bit  
7 different situation if we were dealing with an issue that was  
8 the least bit region specific, okay? This is federal  
9 procurement law. They promised to do something, they promised  
10 to tell the truth, and they didn't. It's just not a terribly  
11 complex issue. And there is a body of federal procurement law  
12 that would be applicable in this. They chose to do  
13 government -- business with the federal government, they chose  
14 to do government all over the world and all the different  
15 states. And so that's the decision they made.

16 THE COURT: All right. Thank you.

17 MR. NETTLES: Thank you, your Honor.

18 THE COURT: Thank you, sir. Anything in reply?

19 MR. WYRSCH: If I can check with my team, your Honor.

20 THE COURT: All right. Hold on one second, Mr.  
21 Wyrsh.

22 (There was a pause in the proceedings)

23 MR. NETTLES: Your Honor, if I could just -- one more  
24 thing. On the notion of federal procurement law, I would draw  
25 opposing counsel and the court's attention to United States



1 Supreme Court case which is 108 Supreme Court 2510, and that's  
2 Boyle versus United Technologies, and that is a 1988 case.

3 THE COURT: All right. Thank you, sir.

4 MR. NETTLES: Thank you.

5 MR. WYRSCH: With respect, I would like to address  
6 Mr. Nettle's statement about search warrant and reweighs at  
7 that point. Actually, the government did come in and reweigh  
8 right after the search. They found three shipments that they  
9 thought there was an issue on and they all got resolved. What  
10 I believe, based on what they have told us, is that some time  
11 after that Mr. Nettles sent either Assistant U.S. Attorneys or  
12 somebody with the government to review the documents in  
13 Atlanta, but yet they won't provide us any specifics and we  
14 can't corroborate what they're saying. So I think there's  
15 some issue there concerning what exactly that they are talking  
16 about.

17 He says that with respect to Hawaii all we have to  
18 show is a submission. Well, a submission is, and the way it  
19 works, is that once you do the shipment and it's delivered  
20 then you bill it. That's the submission. The submission  
21 isn't when you send the shipment to Hawaii it goes into the  
22 warehouse, a government inspector inspects it in a warehouse,  
23 and he says well, the weight is less than what you say, so  
24 here's the weight certificate and billing. So they take the  
25 weight certificate, attach it to the bill of lading and a

1 number of other documents and then it's submitted to the  
2 government.

3 And what's important, too, which at least based on  
4 what we understand is, a lot of those shipments that they are  
5 talking about weren't weighed by the Coleman facility. They  
6 say it is but we haven't been able to corroborate that. So  
7 when he says that the Hawaii shipments are somehow relevant  
8 because they were sent to Hawaii and reweighed, that is just  
9 not the case. You've got to present it for payment and that's  
10 what Takeda Pharmacy says.

11 With respect to Augusta, he says we have three  
12 different managers saying this. Well, in one part of their  
13 complaint they say well, we interviewed a billing clerk at  
14 Augusta that corroborated what the Figueroas say. Now, do  
15 they make the same statement about the other three managers?  
16 They do not. Because to our knowledge the other three  
17 managers haven't corroborated what they have said. But more  
18 than that, all it proves is that there is some alleged scheme  
19 at Augusta, it does not mean that there's a worldwide  
20 conspiracy. So we wanted to bring that to the attention of  
21 the court.

22 With respect to the breach of contract, I just don't  
23 understand what he's talking about in terms of government  
24 procurement law. My knowledge, and I say it's a very complex  
25 industry, that generally what they call the federal

1 acquisition regulations in some ways apply, but generally  
2 there's the -- their own set of regulations with respect to  
3 military shipments through the Department of Defense. So what  
4 he's talking about, I'm sorry, I don't understand it. And if  
5 we could have more specificity in their pleadings maybe we  
6 will be able to respond.

7 Back to our defendants, your Honor, we appreciate  
8 very much the opportunity to argue before you today.

9 THE COURT: All right. Well, the government has  
10 conceded that the cause of action for conspiracy should be  
11 dismissed under the so-called intra-corporate conspiracy  
12 doctrine and so the motion to dismiss is granted as to that  
13 particular claim.

14 Regarding all the remaining claims for false claims  
15 against the government, and breach of contract, I find that  
16 the plaintiff has sufficiently alleged the causes of action  
17 under the applicable precedents, Iqbal and Twombly and the  
18 cases decided under those, as well as Rule 9(b) pleading  
19 fraud. I find that the motion should be denied for that  
20 reason. So we will enter a text order denying the motion and  
21 we will enter a scheduling order.

22 How long do you think we will need for discovery in  
23 the case? Let me make clear I'm granting the motion to  
24 dismiss the conspiracy claim, denying the motion as to all  
25 remaining claims.

1 MR. NETTLES: In terms of discovery, we think we can  
2 do it in nine months.

3 MR. WYRSCH: The defendants believe that under the  
4 standard order, four months for discovery, and I think the  
5 trial, I can't remember, 75 days after maybe the end of  
6 discovery. We want a quick trial, we don't think there ought  
7 to be anymore discovery than that four months --

8 THE COURT: My template scheduling order used to be  
9 four months and back last August I decided I was granting so  
10 many postponements and revised scheduling orders I lengthened  
11 that out to about eight or nine months. So this case comes  
12 under the new regime of nine months. But you think you can do  
13 it quicker? You can think you can be ready sooner? It's  
14 usually the other way around.

15 MR. WYRSCH: We think the government has said, and  
16 they pled this case, that they had this information, that they  
17 knew what these false claims were. So if they have all the  
18 information they don't need nine months for discovery. And so  
19 we think it ought to be a four month situation and a trial  
20 within six to seven months.

21 THE COURT: Mr. Nettles?

22 MR. NETTLES: Well, I won't pretend to speak for how  
23 long it's going to take him to get ready for trial. We  
24 believe it's going to take us nine months. This is -- we have  
25 pled this case, and one of the things I think we made very

1 clear is that this is a worldwide case, and I think with that  
2 we can be ready to go to trial in a worldwide case in nine  
3 months.

4 THE COURT: Well, I'm going to take it under  
5 advisement. We will issue a written scheduling order. If I  
6 give you nine months or something close to that that's a firm  
7 date and to get a future extension is going to have be  
8 something like a heart attack or something really serious to  
9 get me to budge on that final discovery cutoff date. Okay?

10 MR. NETTLES: Thank you.

11 THE COURT: All right. Thank you very much. We will  
12 be in recess.

13 MR. HARPOOTLIAN: Your Honor, may I approach?

14 THE COURT: Yes, sir.

15 MR. WYRSCH: Your Honor, do you want this Powerpoint  
16 marked as an exhibit? I didn't offer it.

17 THE COURT: You can do that. We can mark up my copy.

18 MR. WYRSCH: Thank you.

19 (Recess, 10:45 a.m.)

20

21 I certify that the foregoing is a correct transcript  
22 from the record of proceedings in the above-entitled matter.

23

24 Date: 3-31-14

s/ Daniel E. Mayo

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