

MEMORANDUM

Date: October 26, 2015

TO: MAYOR DUNCAN AND TOWN COMMISSIONERS

CC: Dave Bullock, Town Manager

FROM: Maggie D. Mooney-Portale, Town Attorney

SUBJECT: Settlement offer negotiated by Florida Attorney General Bondi in *United States ex rel. Fulk v. United Parcel Services, Inc.*, pending in the United States District Court for the Eastern District of Virginia (No. 1:11-cv-890)

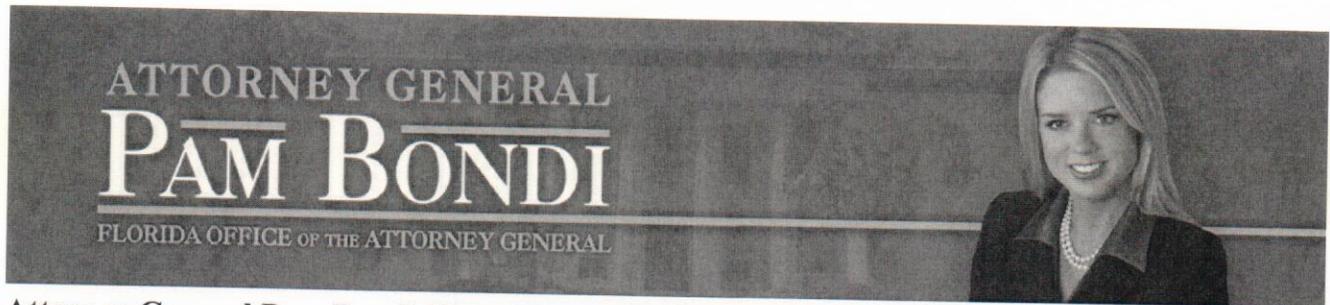
A settlement offer was received by the Town Attorney's office on Thursday, October 22, 2015 from the Florida Attorney General Pam Bondi's office relating to a 2011 civil lawsuit pending in the federal district court in Virginia against the United Parcel Service, Inc. ("UPS") alleging violations of the False Claims Act. Fourteen states, the Cities of Chicago, New York, and the District of Columbia participated in this suit in which it was alleged that UPS overcharged state and local governmental customers for services and misrepresented delivery times. Attorney General Bondi's office represented the State of Florida and its local government political subdivisions in this action and negotiated a settlement amount to resolve the Florida claims with UPS for approximately \$375,000. Her office has calculated a pro rata distribution of the settlement proceeds to various Florida local governments (cities, counties and school districts). The Town has been identified as one of the Florida local governments eligible for a pro rata share of the local government settlement amounts, and the Town's pro rata share as determined by the Florida Attorney General's office is \$1.53 (one dollar and 53/100). A settlement check in that amount has been transmitted to the Town Attorney. According to the terms of the

Settlement Agreement, the Town will be deemed to have been accepted the settlement terms and released UPS for any alleged violations of the False Claims Act, if the Town deposits the \$1.53 **check into the Town's account**. If the Town chooses not to accept the settlement, then the settlement sum shall be deemed forfeited. The deadline to accept the settlement offer and deposit the check is November 13, 2015.

Copies of the following are provided for your information and consideration: (1) an October 21, 2015 press release from Attorney General **Bondi's office relating** to the settlement; (2) the October 19, 2015 **transmittal letter to the Town Attorney from Attorney General Bondi's** office; (3) the Settlement Agreement; and (4) the Complaint in the above referenced lawsuit.

This item is placed on the November 2, 2015 due to the November 13, 2015, deadline imposed by the Settlement Agreement to accept or reject (and forfeit) the settlement. Because acceptance of the settlement sums includes the release of any claim the Town may have under the False Claim Act against UPS is it appropriate for the Town Commission to make the determination on this settlement. The Town Manager and Town Attorney are seeking direction on whether the Town Commission wants to approve the settlement and release, or reject the settlement.

Please don't hesitate to contact me if you have any questions about this agenda item.



Attorney General Pam Bondi News Release

October 21, 2015

Contact: Whitney Ray

Phone: (850) 245-0150

[en Español](#)

[Print Version](#)

[Tweet](#)

Multistate Settlement Reached with UPS Over Package Delivery Practices

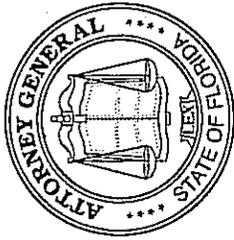
TALLAHASSEE Fla.—Attorney General Pam Bondi today announced a four million dollar multistate settlement with United Parcel Service, Inc., the world's largest package delivery company, resolving allegations that its employees violated the false claims acts of 14 states, Chicago, New York City, and the District of Columbia by overcharging governmental customers on certain transactions.

The lawsuit alleged that certain UPS employees recorded inaccurate delivery times on packages sent by governmental customers through next-day delivery services, resulting in premium-priced packages that appeared to have been delivered by their guaranteed commitment times when they had not been timely delivered. The lawsuit also alleged that certain UPS employees applied inapplicable or inappropriate exception codes to excuse late next-day packages, including claims of weather emergencies despite sunny conditions. As a result, the governmental customers were unable to claim or receive refunds for the late deliveries under the terms of their contracts.

Out of the four million dollar multistate settlement, Florida and local governments in the state, including cities, counties, and school districts, are recovering more than \$375,000 as reimbursement for these overcharges. In addition, UPS has instituted remedial training, monitoring, and reporting compliance programs to address any potential delivery failures or policy violations.

Also joining the settlement are the States of California, Delaware, Hawaii, Illinois, Indiana, Minnesota, Montana, New Mexico, New York, North Carolina, Tennessee, the Commonwealths of Massachusetts and Virginia, the District of Columbia, and the cities of New York and Chicago. This settlement is the result of a qui tam lawsuit, filed in the United States District Court for the Eastern District of Virginia.

Qui tam actions are brought under the Florida False Claims Act. The Act authorizes a private person, or relator, who claims to have knowledge of fraud involving state funds to bring a sealed case. The Attorney General's Office then has the opportunity to investigate the allegations, gather additional information, and intervene in and proceed with the case if appropriate. The Florida Legislature updated this important law in 2013 to provide the Attorney General with additional authority to protect taxpayers' money.



PAM BONDI
ATTORNEY GENERAL
STATE OF FLORIDA

OFFICE OF THE ATTORNEY GENERAL

Russell S. Kent
Special Counsel for Litigation
PL-01, The Capitol
Tallahassee, FL 32399-1050
Phone (850) 414-3854
russell.kent@myfloridalegal.com

October 19, 2015

Maggie Mooney-Portale
Persson & Cohen, PA
Town Of Longboat Key
6853 Energy Ct
Lakewood Ranch, FL 34240-8523

**Re: Notice of Settlement of United States *ex rel.* Fulk v. United Parcel Service, Inc.,
United States District Court for the Eastern District of Virginia (No. 1:11-cv-890)**

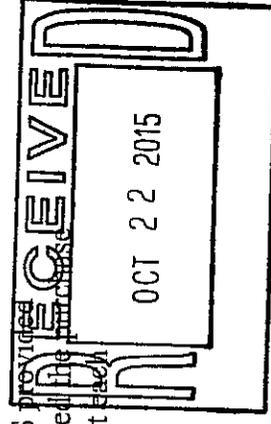
Dear Sir / Madam:

I write to inform you of an October 6, 2015, multistate settlement of the above-captioned litigation. You are receiving this notice because your organization has been identified as a local governmental entity that is entitled to participate in the settlement proceeds. Accordingly, enclosed is a check for \$1.53 for your consideration.

This check constitutes your entity's pro rata share of the proceeds under a settlement agreement entered into by this office. Enclosed for your information is the complaint in the lawsuit and the settlement agreement.

This settlement is the result of a *qui tam* or False Claims Act lawsuit which alleged that United Parcel Service, Inc. ("UPS") may have overcharged many governmental customers. Certain UPS employees allegedly recorded inaccurate delivery times on packages sent by governmental customers through next-day delivery services, resulting in premium-priced packages that appeared to have been delivered by their guaranteed commitment times when they had not been timely delivered. The civil lawsuit also alleged that certain UPS employees applied inapplicable or inappropriate exception codes to excuse late next-day packages, including claims of weather emergencies despite sunny conditions, resulting in governmental customers being unable to claim or receive refunds for the late deliveries under the terms of their contracts.

While the lawsuit did not include local government purchases in Florida, this office asked that the settlement be expanded to provide relief to local governmental entities and UPS agreed to the request. In connection with the settlement discussions, UPS provided purchase data for Florida local governmental entities. This office then used the information and a common damage formula to determine the amount that each governmental entity would receive.



By accepting and depositing the enclosed check by November 13, 2015, you are consenting to and agreeing to be bound by the provisions of the enclosed Settlement Agreement, including the release and excluded claim provisions in Paragraphs 8 and 9 of the Settlement Agreement. If you do not deposit the enclosed check by November 13, 2015, you will forfeit your pro rata share of the settlement proceeds

While the ultimate decision must be made by your entity, this office believes that the settlement represents a favorable outcome. If you have any questions about this notice or the settlement terms, please feel free to contact me at your earliest convenience.

Thank you for allowing this office the opportunity to serve you.

Sincerely,

A handwritten signature in black ink that reads "Russell S. Kent". The signature is written in a cursive style with a large, prominent "R" at the beginning.

Russell S. Kent
Special Counsel for Litigation

Enclosures



United Parcel Service
1335 Northmeadow Parkway, Suite 119
Roswell, GA 30076-4949

United Parcel Service
1335 Northmeadow Parkway, Suite 119
Roswell, GA 30076-4949

Tel: (844) 757-3651
Attn: Accounts Payables
<https://ups.cmdesk.com>

No. 846234
The UPS Help Line is a confidential and anonymous way to report unethical or illegal behavior - Call: 1 800 220 4126

INVOICE NUMBER	INVOICE DATE	CUST. ACCT. NO.	VENDOR NAME	PURCHASE ORDER	GROSS	DISCOUNT	NET
LEGAL324159 STATE OTP PAYMENT	05-OCT-15	90	TOWN OF LONGBOAT KEY	UNMATCHED		0.00	1.53
						0.00	1.53

PLEASE DETACH AND RETAIN THIS STATEMENT AS YOUR RECORD OF PAYMENT. Thank You

THIS CHECK CONTAINS SAFETY FEATURES FRONT AND BACK. DO NOT CASH UNLESS YOU CAN SEE THE WORD "SAFE" WHEN HOLDING AT AN ANGLE.



United Parcel Service

1335 Northmeadow Parkway, Suite 119
Roswell, GA 30076-4949

JPMorgan Chase Bank, N.A.
Syracuse, NY

50-937 8783-09
213

No. 846234

PAY IN U.S. DOLLARS

PAY

CHECK DATE | CHECK NUMBER | CHECK AMOUNT

07-OCT-15 | 846234 | \$1.53

One Dollar And Fifty-three Cents*****

TO THE ORDER OF
TOWN OF LONGBOAT KEY
6853 ENERGY CT
LAKEWOOD RAN, FL 34240
United States

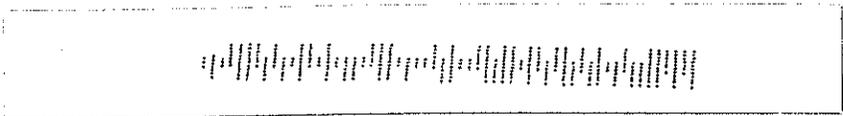
VOID SIX MONTHS AFTER CHECK DATE

RIT Bando

Authorized Signature

⑈0000846234⑈ ⑆021309379⑆ 6304487835509⑈

Russell S. Kent, Esq.
Special Counsel for Litigation
Office of the Attorney General
The Capitol, PL-01
Tallahassee, FL 32399



Hagler

10/20/2015

USPS

POSTAGE

\$02.52



ZIP 32301
011011648826

Maggie Mooney-Portale
Persson & Cohen, PA
TOWN OF LONGBOAT KEY
6853 Energy Ct
Lakewood Ranch, FL 34240-8523

SETTLEMENT AGREEMENT

PARTIES

This Settlement Agreement (the "Agreement") is entered into by defendants United Parcel Service, Inc., UPS Supply Chain Solutions, and UPS Freight ("Defendants" or "UPS"), relator Robert K. Fulk ("Relator"), and the following state and municipal parties (the "Participating Jurisdictions"), through their authorized representatives:

1. California;
2. Chicago;
3. Delaware;
4. District of Columbia;
5. Florida;
6. Hawaii;
7. Illinois;
8. Indiana;
9. Commonwealth of Massachusetts;
10. Minnesota;
11. Montana;
12. New Mexico;
13. New York;
14. New York City;
15. North Carolina;
16. Tennessee; and
17. Commonwealth of Virginia.

The above-named parties are hereinafter collectively referred to as the "Parties."

PREAMBLE

WHEREAS, on August 19, 2011, Relator filed a *qui tam* complaint (the "Action") captioned *United States et al. ex rel. Fulk v. United Parcel Service et al.*, No. 11 civ. 890 (CMH)(TCB), alleging, *inter alia*, violations of the Federal False Claims Act and the respective false claims acts of the Participating Jurisdictions by the Defendants;

WHEREAS, the Participating Jurisdictions thereafter commenced investigations in connection with the allegations of the Action;

WHEREAS, as a result of those investigations, the Participating Jurisdictions contend that they have certain civil claims against Defendants under their respective false claims acts;

WHEREAS, UPS has instituted remedial training, monitoring, and reporting compliance programs to address any potential delivery failures or policy violations;

WHEREAS, the Attorneys General of the States of California, Florida, Hawaii, and Minnesota sign this Agreement on behalf of their respective States only, due to the nature of their respective state false claims acts. These Attorneys General will identify the local governments and political subdivisions in their States that could have been affected by the Covered Conduct ("Political Subdivisions"), as described in Paragraph 2 of this Agreement, and recommend that they join this settlement through the process described in Paragraphs 16-17 of this Agreement;

WHEREAS, to avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, the Parties have determined that settlement is in each of their best interests; and

WHEREAS, this Agreement is made in compromise of disputed claims and is neither an admission of liability by Defendants, which deny the allegations, nor a concession by the Participating Jurisdictions and/or Relator that their claims are not well founded.

NOW THEREFORE, in consideration of the mutual promises and obligations of the Agreement, the Parties agree and covenant as follows:

BACKGROUND

1. UPS is a global package delivery company headquartered in Sandy Springs, Georgia, delivering millions of packages a day to millions of customers, including governmental entities. Part of UPS's domestic product portfolio is its next day delivery services, which guarantees delivery on the next business day to most zip codes by a set time (e.g., 8:00 a.m., 10:30 a.m. or 3:00 p.m.), known as a guaranteed commitment time.

2. The Participating Jurisdictions contend that from January 1, 2004 through December 31, 2014, certain UPS employees violated the Participating Jurisdictions' false claims acts by (a) recording inaccurate delivery times on packages sent via UPS next day delivery services and paid for by the Participating Jurisdictions, or Political Subdivisions, resulting in packages that appeared to be delivered by their guaranteed commitment times when, in fact, they were not; and (b) applying inapplicable or inappropriate "exception codes" to excuse late next day packages paid for by the Participating Jurisdictions, or Political Subdivisions. As a result of this conduct, the Participating Jurisdictions, and Political Subdivisions, were unable to claim or receive refunds for the late deliveries under the terms of the contracts. The foregoing conduct is referred to as the "Covered Conduct."

TERMS AND CONDITIONS

3. This Agreement is effective on the date of signature of the last signatory of the Agreement (the "Effective Date").

4. Within 10 days of the Effective Date, Defendants will pay the Participating Jurisdictions the following amounts in costs and damages to resolve their respective false claims causes of action pleaded in the Action:

- 1) California – \$348,649.78. UPS will pay an additional \$282,606.96 to California Political Subdivisions, as set forth in Paragraphs 16-17 of this Agreement;
- 2) Chicago – \$28,970.97;
- 3) Delaware – \$31,248.25;
- 4) District of Columbia – \$459.77;
- 5) Florida – \$356,582.18. UPS will pay an additional \$19,561.56 to Florida Political Subdivisions as set forth in Paragraphs 16-17 of this Agreement;

- 6) Hawaii – \$34,718.83. UPS will pay an additional \$8.20 to a Hawaii Political Subdivision, as set forth in Paragraphs 16-17 of this Agreement;
- 7) Illinois – \$779,415.07;
- 8) Indiana – \$94,407.30;
- 9) Commonwealth of Massachusetts – \$216,947.28;
- 10) Minnesota – \$48,734.16. UPS will pay an additional \$4,281.63 to Minnesota Political Subdivisions, as set forth in Paragraphs 16-17 of this Agreement;
- 11) Montana – \$27,763.66;
- 12) New Mexico – \$124,454.75;
- 13) New York – \$1,467,920.38, minus the 17% New York Relator's Share as defined in Paragraph 6 of this Agreement to be paid directly to Relator by UPS, for a net payment of \$1,218,373.92;
- 14) New York City – included in New York's net payment;
- 15) North Carolina – \$49,723.81;
- 16) Tennessee – \$36,751.21; and
- 17) Commonwealth of Virginia \$241,056.34.

Individually, the amounts to be paid to each Participating Jurisdiction are referred to as a "Settlement Amount," and the total of the amounts to be paid to all of the Participating Jurisdictions is referred to as the "Full Settlement Amount." Defendants will pay the Settlement Amounts by check or wire transfer pursuant to instructions provided by each Participating Jurisdiction. Amounts to be paid to Political Subdivisions, including Relator's share of those

amounts, shall be paid in accordance with Paragraphs 16-17 of this Agreement. The Court has not assessed a penalty or fine against Defendants in the Action.

5. Except for the State of New York and New York City, within 30 days after a Participating Jurisdiction receives its respective Settlement Amount, that Participating Jurisdiction will pay Relator 17% of that amount ("Relator's Share"). Such payments shall be made by check or wire transfer to a trust account for Relator pursuant to written instructions provided by his counsel.

6. Within 10 days of the Effective Date, Defendants shall pay Relator \$249,546.46 ("New York Relator's Share"), which is the share of the State of New York's and New York City's Settlement Amount to which Relator is entitled under New York State Finance Law § 190(6) and N.Y.C. Admin. Code § 7-804(i).

7. Within 15 days of payment by Defendants of the Full Settlement Amount and the New York Relator's Share:

(a) the Participating Jurisdictions shall file in the Action a Notice (or Notices) of Voluntary Dismissal With Prejudice, dismissing, subject to Paragraphs 15, 19, 22, and 23 of the Agreement (concerning, among other things, bankruptcy proceedings commenced within 91 days of the Effective Date), the Participating Jurisdictions' action, in a form prepared by the Participating Jurisdictions and consistent with local practice and procedure, including terms that provide that the dismissal is with prejudice to the Participating Jurisdictions as to all claims in the

Action; and

(b) Relator shall file in the Action a Notice of Voluntary Dismissal With Prejudice, dismissing all remaining claims with prejudice.

8. Subject to the exceptions in the next paragraph, in consideration of the obligations of Defendants set forth in this Agreement, conditioned upon the full payment by Defendants of the Full Settlement Amount and the New York Relator's Share, and subject to Paragraphs 15, 19, 22, and 23 of the Agreement (concerning, among other things, bankruptcy proceedings commenced within 91 days of the Effective Date), the Participating Jurisdictions release UPS, together with its current and former parent corporations, direct and indirect subsidiaries, brother or sister corporations, divisions, current or former owners, officers, directors, agents, employees, and affiliates, and the successors and assigns of any of them (collectively, the "UPS Affiliates") from any civil or administrative claim (if applicable) that the Participating Jurisdictions have or may have authority to bring for the Covered Conduct.

9. Notwithstanding any term of this Agreement, the Participating Jurisdictions specifically do not release any person or entity from any of the following liabilities:

- (a) any civil or administrative liability arising under state or municipal tax laws;
- (b) any criminal liability;
- (c) any civil or administrative liability that Defendants have or may have under any state or municipal statute, regulation, or rule not covered by this Agreement;
- (d) any liability to the Participating Jurisdictions or the Political Subdivisions for any conduct other than the Covered Conduct;
- (e) any liability arising out of or related to the claims in the lawsuit captioned *State of New York and City of New York v. United Parcel Service, Inc.*, 15 civ. 1136 (S.D.N.Y.);

- (f) any liability based upon obligations created by this Agreement;
- (g) any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct;
- (h) any liability to the Political Subdivisions, subject to Paragraphs 16 and 17 of this Agreement;
- (i) any claims that the Participating Jurisdictions do not have authority to release, including without limitation claims belonging to California entities other than the California Attorney General's Office, Florida entities other than the Florida Attorney General's Office, Hawaii entities other than the Hawaii Attorney General's Office, and Minnesota entities other than the Minnesota Attorney General's Office; and
- (j) except for the Covered Conduct, any liability for failure to deliver goods or services due.

Further, the Minnesota Attorney General through this Settlement Agreement does not settle, release, or resolve any claim against UPS or any other person or entity involving any private causes of action, claims, and remedies including, but not limited to, private causes of action, claims, or remedies provided for under Minn. Stat. § 8.31.

10. UPS shall pay reasonable expenses plus reasonable attorneys' fees and costs that Relator incurred in connection with the Action under the provisions for recovery of such fees, expenses, and costs in the respective false claims acts of the Participating Jurisdictions ("Relator's Attorneys' Fees"), pursuant to either: (a) a separate written agreement mutually arrived at between UPS, Relator, and Relator's counsel; or (b) court order.

11. In consideration of the obligations of Defendants in this Agreement, conditioned upon the full payment by Defendants of the Full Settlement Amount, the New York Relator's Share, and Relator's Attorneys' Fees, and subject to Paragraphs 15, 19, 22, and 23 of the Agreement (concerning, among other things, bankruptcy proceedings commenced within 91 days of the Effective Date), Relator, for himself and his heirs, personal representatives, legal representatives, successors, attorneys, agents, and assigns, releases Defendants and the UPS Affiliates from any claim that he may have against them for the Covered Conduct as well as from every remaining claim in the Action whether raised on Relator's own behalf or on behalf of a government entity.

12. UPS on behalf of itself and each UPS Affiliate fully and finally releases the Participating Jurisdictions, their agencies, divisions, political subdivisions, entities, officials, employees, servants, attorneys, representatives, and agents (except Political Subdivisions of California, Florida, Hawaii, and Minnesota that do not release claims pursuant to Paragraph 16 and 17 of the Agreement) from any claims (including but not limited to, claims for attorneys' fees, costs, and expenses of every kind and however denominated) that any Defendant or any UPS Affiliate has asserted, could have asserted, or may assert in the future against the Participating Jurisdictions, their agencies, divisions, subdivisions, entities, officials, employees, servants, attorneys, representatives, and/or agents, related to the Covered Conduct and the Participating Jurisdictions' investigation and prosecution thereof.

13. UPS on behalf of itself and each UPS Affiliate, fully and finally release, waive, and discharge (and shall cause each UPS Affiliate to so release) Relator, his heirs, personal representatives, legal representatives, successors, attorneys, agents, and assigns from any rights, claims, remedies, expenses, debts, liabilities, demands, obligations, costs, damages, injuries,

actions, and causes of action of any nature (including, without limitation, claims for attorneys' fees, costs, and expenses of every kind and however denominated) that any Defendant or any UPS Affiliate has asserted, could have asserted, or may assert in the future against Relator, his heirs, personal representatives, legal representatives, successors, attorneys, agents, or assigns, related to the Covered Conduct or to Relator's or any of the Participating Jurisdictions' filings, investigations or prosecution thereof.

14. Relator, and each of his heirs, personal representatives, legal representatives, successors, attorneys, agents, and assigns, will not object to this Agreement and agrees and confirms that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to New York State Finance Law § 190(5)(b)(ii), and the similar provisions of each of the other Participating Jurisdictions' false claims acts. Except for New York State and New York City, for which the releases in this Paragraph are immediately applicable, conditioned upon Relator's receipt of the full payment from the respective Participating Jurisdiction of the applicable Relator's Share, Relator, for himself individually and for his heirs, personal representatives, legal representatives, successors, attorneys, agents, and assigns, fully and finally releases, waives, and forever discharges such Participating Jurisdiction and its agencies, divisions, subdivisions, entities, officials, officers, agents, representatives, and employees from any and all rights, claims, remedies, expenses, debts, liabilities, demands, obligations, costs, damages, injuries, actions, and causes of action of any nature that Relator has asserted, could have asserted, or may assert in the future against such Participating Jurisdiction arising out of the filing of the Action or from any other claim for a share of the settlement proceeds or recovery of his fees, expenses or costs. Relator accepts such payment of the Relator's Share from such Participating Jurisdiction and the New York Relator's Share in full and final settlement of any

claims he has or may have under such Participating Jurisdiction's false claims act. This Agreement does not resolve or in any manner affect any claims the Participating Jurisdictions have or may have against Relator arising under the Participating Jurisdictions' tax laws, or any claims of any Participating Jurisdiction or of Relator arising under this Agreement.

15. The Participating Jurisdictions have agreed to the terms of this Agreement based on, among other things, the representations made by Defendants and their counsel to the attorneys for the Participating Jurisdictions. To the extent that any material representations are later found to be materially inaccurate or misleading, this Agreement is voidable by the Participating Jurisdictions in their sole discretion. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Agreement has been made to or relied upon by Defendants in agreeing to this Agreement. Defendants represent that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion.

16. On or before the Effective Date, the Attorneys General of the States of California, Florida, Hawaii, and Minnesota, or their designees, will each notify UPS of the identity and portion of the amounts set forth in Paragraph 4 that is attributable to each of their respective Political Subdivisions (the "Political Subdivision Amounts").

(a) Within 10 business days following the Effective Date, UPS will provide the relevant Attorney General's Office with a check payable to each identified Political Subdivision. The checks payable to the Florida Political Subdivisions will be in the Political Subdivision Amounts identified by the State of Florida. The checks payable to Hawaii and Minnesota Political Subdivisions will be in the Political Subdivision Amounts identified by the States of Hawaii and Minnesota minus the 17% Relator's share. The checks payable to the California Political

Subdivisions will be in the Political Subdivision Amounts identified by the State of California minus the 17% Relator's Share and minus the 33% State of California's share of the Political Subdivision Amounts ("California Share"), for a 50% total reduction to the California Political Subdivision Amounts.

(b) The Attorneys General or their designees will provide to each Political Subdivision its respective check along with the following language in boldface text: **"By accepting and depositing the enclosed check by November 13, 2015, you are consenting to and agreeing to be bound by the provisions of the enclosed Settlement Agreement, including the release and excluded claim provisions in Paragraphs 8 and 9 of the Settlement Agreement. If you do not deposit the enclosed check by November 13, 2015, you will forfeit your pro rata share of the settlement proceeds."** (the "Notification"). Contemporaneous copies of the Notification will be provided to UPS with copies of delivery confirmations and/or return receipts confirming the distribution of the Notification and check to each Political Subdivision.

17. Each Political Subdivision will have until November 13, 2015, to review the Notification, seek additional information if needed from the Attorney General or his or her designee and decide whether to consent to the settlement.

(a) A Political Subdivision's failure to deposit its check by November 13, 2015, will not result in any increase in the pro rata share of the settlement funds to which the Relator or any Participating Jurisdiction or Political Subdivision is entitled under the terms of this Agreement. Any checks that are not deposited by the Political Subdivisions by November 13, 2015 will be forfeited ("Forfeited

Political Subdivision Amounts”). The Parties agree that no Participating Jurisdiction or Political Subdivision is entitled to any share of the Forfeited Political Subdivision Amounts.

(b) Within 10 days of the Effective Date, UPS will pay Relator \$48,772.46 as full and complete satisfaction of any amount to which Relator is entitled relating to the Political Subdivisions. The Parties agree that Relator is not entitled to any share of the Florida Political Subdivision Amounts. Relator will not be required to refund or otherwise repay any amount of Relator’s Share relating to Forfeited Political Subdivision Amounts or Relator’s Share of Political Subdivision amounts in the event a Political Subdivision seeks to collect damages, losses, or other penalties based on the Covered Conduct.

(c) Within 10 days of the Effective Date, UPS will pay California \$67,093.54 towards the California Share. By November 30, 2015, UPS will pay California 33% of the Political Subdivision Amounts attributable to the California Political Subdivisions that have cashed their checks. UPS’s earlier payment of \$67,093.54 will be credited against this second payment. Accordingly, the total California Share shall be no less than \$67,093.54, and no more than \$93,260.30. These amounts constitute full and complete satisfaction of any amount to which California is entitled relating to the Political Subdivisions.

18. For purposes of construction, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and therefore shall not be construed against any Party for that reason in any subsequent dispute.

19. If within 91 days of the Effective Date or any payment made under this Agreement by any Defendant, whichever is later, any Defendant, a representative on behalf of the Defendants, or a third party commences any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking to have any order for relief of its or their debts, or seeking to adjudicate any Defendant as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for any Defendant or for all or any substantial part of its assets, Defendants agree as follows:

(a) Defendants' obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547 or other law, and none of the Defendants shall argue, allege any defense, or otherwise take the position in any such case, proceeding, or action that: (i) any of their obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) any of them were insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment of any Settlement Amount; or (iii) the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to Defendants.

(b) If any of Defendants' obligations under this Agreement to any Participating Jurisdiction or Relator are avoided for any reason, or payments made to such Participating Jurisdiction or Relator are recouped, clawed back, or otherwise required to be repaid in any proceeding, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, such Participating Jurisdiction or Relator, as the case may be, at its sole option, may rescind the releases, waivers and discharges in this Agreement given by such

Participating Jurisdiction or Relator, as the case may be, to all of the Defendants and to their related parties as set forth in such releases, etc., and bring any civil and/or administrative claim, action, or proceeding against Defendants for the claims that would otherwise be covered by such releases, and Defendants agree that (i) any such claims, actions, or proceedings brought by such Participating Jurisdiction or Relator, as the case may be, are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceedings described in the first clause of this Paragraph, and none of the Defendants shall argue or otherwise contend that such Participating Jurisdiction's or Relator's claims, actions, or proceedings, as the case may be, are subject to an automatic stay; (ii) none of the Defendants shall plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claims, actions, or proceedings that are brought by such Participating Jurisdiction, or Relator, as the case may be, within 60 calendar days of written notification to Defendants that such releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the Effective Date; and (iii) such Participating Jurisdiction or Relator may pursue such claim in the case, action, or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

(c) Defendants acknowledge that their agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

20. Except as provided for specifically in each Paragraph, this Agreement is intended to be for the benefit of the Parties only.

21. UPS agrees to the following:

(a) **Unallowable Costs Defined:** All costs incurred by or on behalf of UPS, and its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the Participating Jurisdictions' audits and civil investigations of the matters covered by this Agreement;
- (3) UPS's investigation, defense, and corrective actions undertaken in response to the Participating Jurisdictions' audits and civil investigations in connection with the matters covered by this Agreement (including attorneys' fees incurred by UPS);
- (4) the negotiation and performance of this Agreement; or
- (5) the payments UPS makes to the Participating Jurisdictions pursuant to this Agreement and any payments that UPS makes to Relator or Relator's Counsel pursuant to this Agreement (including Relator's Attorneys' Fees);

are unallowable costs for government contracting purposes (hereinafter referred to as "Unallowable Costs").

(b) **Future Treatment of Unallowable Costs:** UPS shall not charge such Unallowable Costs directly or indirectly to any contract with a Participating Jurisdiction and shall not cite such Unallowable Costs as the basis for any request for a price increase under any contract with a Participating Jurisdiction or in which a Participating Jurisdiction participates.

22. In the event of the failure by Defendants to make any payments of the Settlement Amounts within the specified time, a Participating Jurisdiction that was not timely paid (the "Creditor Jurisdiction") may provide written notice of the non-payment to Defendants. Such notice shall be addressed to the attorney(s) for Defendants identified in the signature block of this Agreement and delivered (i) in person, (ii) by a nationally recognized next day courier service, or (iii) by first class, registered or certified mail, postage prepaid. Notice so given shall be effective upon (i) receipt, or (ii) on the fifth business day following mailing, whichever occurs first. Defendants shall have an opportunity to pay the unpaid balance within five calendar days from the effective date of the notice. If Defendants fail to pay the overdue Settlement Amount within five calendar days from the effective date of notice of non-payment ("Default"), a Creditor Jurisdiction, in its sole discretion, may:

- (a) declare the entire Settlement Amount for that Creditor Jurisdiction, less any payments already made, immediately due and payable, with unpaid amounts bearing interest at the rate set forth in New York Civil Practice Law and Rules § 5004 beginning as of the date of Default until payment of the remaining Settlement Amount is made in full. Except with respect to the State of New York and New York City, Relator shall be entitled to its *pro rata* share of any such interest so collected on the amount to be paid as Relator's Share by such Creditor Jurisdiction; and/or
- (b) rescind its agreement to this Agreement as to Defendants and pursue all available remedies; and/or
- (c) reinstitute an action or actions against Defendants in this or another Court. In the event the Creditor Jurisdiction reinstitutes this action, Defendants:

(1) expressly agree not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel or similar theories, to any civil or administrative claims which (i) are filed by the Creditor Jurisdiction after the written notification to Defendants that this Agreement has been rescinded, and (ii) relate to the Covered Conduct; and (2) further agree that Relator's claims with respect to the Covered Conduct in such Creditor Jurisdiction shall revive to any extent that such claims have been expunged, expired, or have lapsed.

In the event of a Default as described above, Defendants agree not to contest any action to enforce this Agreement or any other collection action undertaken by the Creditor Jurisdiction pursuant to this Paragraph, and Defendants agree to pay the Creditor Jurisdiction all reasonable costs of collection and enforcement of this Agreement, including attorneys' fees and expenses.

23. In the event of the failure by Defendants to pay the New York Relator's Share within the specified time, Relator may provide written notice of the non-payment to Defendants. Such notice shall be addressed to the attorney(s) for Defendants identified in the signature block of this Agreement and delivered (i) in person, (ii) by a nationally recognized next day courier service, or (iii) by first class, registered or certified mail, postage prepaid. Notice so given shall be effective upon (i) receipt, or (ii) on the fifth business day following mailing, whichever occurs first. Defendants shall have an opportunity to pay the unpaid balance within five calendar days from the effective date of the notice. If Defendants fail to pay the overdue unpaid balance of their payment obligations under this Agreement within five calendar days from the effective date of notice of non-payment ("Default"), Relator, in his sole discretion, may:

- (a) declare the entire New York Relator's Share, less any payments already made, immediately due and payable, with unpaid amounts bearing interest at the

rate set forth in New York Civil Practice Law and Rules § 5004 beginning as of the date of Default until payment of the remaining New York Relator's Share is made in full; and/or

(b) rescind his agreement to this Agreement as to Defendants and pursue all available remedies; and/or

(c) reinstitute an action or actions against Defendants in this or another Court. In the event Relator reinstitutes this action, Defendants: (1) expressly agree not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel or similar theories, to any civil or administrative claims which (i) are filed by Relator after the written notification to Defendants that this Agreement has been rescinded, and (ii) relate to the Covered Conduct; (2) further agree that Relator's claims with respect to the Covered Conduct in New York shall revive to any extent that such claims have been expunged, expired, or have lapsed.

In the event of a Default as described above, Defendants agree not to contest any action to enforce this Agreement or any other collection action undertaken by Relator pursuant to this Paragraph, and Defendants agree to pay Relator all reasonable costs of collection and enforcement of this Agreement, including, without limitation, reasonable attorneys' fees, expenses associated therewith, and court costs.

24. The undersigned counsel and any other signatories represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

25. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by an instrument in writing signed on behalf of all the Parties to this Agreement.

26. In the event that any one or more of the provisions contained in this Agreement, other than provisions concerning payment and release, shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement.

27. Any failure by any of the Participating Jurisdictions to insist upon the strict performance by Defendants and/or Relator of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions hereof, and the Participating Jurisdictions, notwithstanding the failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Agreement to be performed by any or all of the Parties.

28. The Defendants' obligations to make payments under this Agreement shall be joint and several.

29. This Agreement is binding on each Defendant's successors, transferees, and assigns.

30. This Agreement is binding on Relator's successors, transferees, heirs, and assigns.

31. Each Defendant waives and shall not assert any defenses such Defendant may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution or any similar state law provisions, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Nothing in this paragraph

or any other provision of this Agreement constitutes an agreement by the Participating Jurisdictions concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code, or any state or municipal tax laws.

32. The Parties acknowledge that this Agreement is a public document.

33. Nothing in this Agreement waives in any way the Sovereign Immunity of any Participating Jurisdiction.

34. All communications from any Party to another Party concerning this Agreement shall be sent by United States mail with return receipt requested or overnight delivery service with signature required to the signatory counsel for each Party, unless such communications are sent by email and a reply is written without objection to the electronic means of communication.

35. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitutes one and the same agreement. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

IN WITNESS WHEREOF, the Agreement is executed by the Parties hereto.

RELATOR ROBERT K. FULK

Dated: Sept. 30, 2015

BY: 
Robert K. Fulk

Dated: _____, 2015

BY: _____
Shanlon Wu
Julie Grohovsky
WU, GROHOVSKY & WHIPPLE, P.L.L.C.
Ronald Reagan International Trade Center
1300 Pennsylvania Ave., N.W. Suite 700
Washington, D.C. 20004
202-204-3053

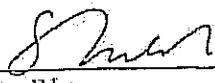
Counsel for Relator

RELATOR ROBERT K. FULK

Dated: _____, 2015

BY: _____
Robert K. Fulk

Dated: 9/2, 2015

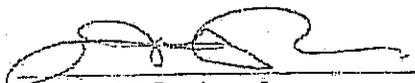
BY:  _____
Shanlon Wu
Julie Grohovsky
WU, GROHOVSKY & WHIPPLE, P.L.L.C.
Ronald Reagan International Trade Center
1300 Pennsylvania Ave., N. W. Suite 700
Washington, D.C. 20004
202-204-3053

Counsel for Relator

DEFENDANTS UNITED PARCEL SERVICE,
UPS SUPPLY CHAIN, AND UPS FREIGHT

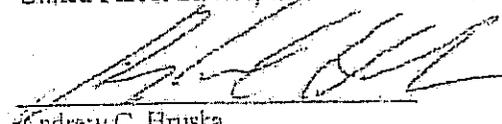
Dated: Oct 6, 2015

BY:


Norman M. Brothers, Jr.
Assistant Secretary
United Parcel Service, Inc.

Dated: Oct 6, 2015

BY:


Andrew C. Hruska
KING & SPALDING LLP
1185 Avenue of the Americas
New York, NY 10036
212-556-2100

Courtney Trombly
Edmund P. Power
KING & SPALDING LLP
1700 Pennsylvania Avenue
Washington, D.C. 20006
202-737-0500

Counsel for Defendants

THE STATE OF FLORIDA

Dated: Sept 24 2015

PAMELA JO BONDI
Florida Attorney General

BY: Russell S. Kent

Russell S. Kent
Special Counsel for Litigation
Office of the Attorney General
The Capitol, PL-01
Tallahassee, FL 32399-1050
(850) 414-3854

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

FILED

2011 AUG 19 A 10 15

CLERK OF DISTRICT COURT
ALEXANDRIA, VIRGINIA

CASE NO.: 1:11 CV 890
CMH/TCB

UNITED STATES OF AMERICA ex rel.
ROBERT K. FULK, the DISTRICT of COLUMBIA
ex rel. ROBERT K. FULK, CALIFORNIA ex rel.
ROBERT K. FULK, DELAWARE ex rel. ROBERT
K. FULK, FLORIDA ex rel. ROBERT K. FULK,
HAWAII ex rel. ROBERT K. FULK, ILLINOIS ex
rel. ROBERT K. FULK, INDIANA ex rel. ROBERT
K. FULK, MASSACHUSETTS ex rel. ROBERT K.
FULK, MINNESOTA ex rel. ROBERT K. FULK,
MONTANA ex rel. ROBERT K. FULK, NEVADA ex
rel. ROBERT K. FULK, NEW HAMPSHIRE ex rel.
ROBERT K. FULK, NEW JERSEY ex rel. ROBERT
K. FULK, NEW MEXICO ex rel. ROBERT K.
FULK, NEW YORK ex rel. ROBERT K. FULK,
NORTH CAROLINA ex rel. ROBERT K. FULK,
OKLAHOMA ex rel. ROBERT K. FULK, RHODE
ISLAND ex rel. ROBERT K. FULK, TENNESSEE ex
rel. ROBERT K. FULK, VIRGINIA ex rel. ROBERT
K. FULK, THE CITY OF CHICAGO ex rel.
ROBERT K. FULK, NEW YORK CITY ex rel.
ROBERT K. FULK, and ROBERT K. FULK,
individually,

Plaintiffs

v.

UNITED PARCEL SERVICE, UPS SUPPLY
CHAIN, AND UPS FREIGHT

Defendants.

FILED UNDER SEAL
PURSUANT TO 31 U.S.C. §
3729 ET SEQ.

JURY TRIAL DEMANDED

**COMPLAINT FOR DAMAGES UNDER THE FEDERAL FALSE CLAIMS
ACT AND VARIOUS STATE AND CITY FALSE CLAIMS ACTS AND
DEMAND FOR JURY TRIAL**

This is an action against United Parcel Service, UPS Supply Chain, and UPS Freight for engaging in fraudulent billing practices that violate the federal False Claims Act and its state and city law counterparts. This action is brought by Robert K. Fulk ("Relator"), by and through his undersigned attorneys, on behalf of himself, the United States of America ("United States") and

the District of Columbia, the State of California, the State of Delaware, the State of Florida, the State of Hawaii, the State of Illinois, the State of Indiana, the Commonwealth of Massachusetts, the State of Minnesota, the State of Montana, the State of Nevada, the State of New Hampshire, the State of New Jersey, the State of New Mexico, the State of New York, the State of North Carolina, the State of Oklahoma, the State of Rhode Island, the State of Tennessee, the Commonwealth of Virginia, the city of Chicago and New York City (collectively "Plaintiff States and Local Governments"). Relator avers as follows for his Complaint against United Parcel Service, UPS Supply Chain, and UPS Freight (collectively "UPS" or "Defendants") based upon personal knowledge and relevant documents:

I. INTRODUCTION

1. Defendants UPS charge the United States and various state and local governments hundreds of millions of dollars annually for delivery services. The services offered by UPS must compete with similar services offered by such companies as Federal Express and the United States Postal Service. In order to maximize its profit in such a competitive environment, UPS has implemented a systematic pattern of fraud against the United States and Plaintiff States and Local Governments. UPS accomplishes this fraud by charging the United States and Plaintiff States and Local Governments for premium classes of delivery with guaranteed delivery times without actually providing the paid for service. UPS thereby defrauds the United States and Plaintiff States and Local Governments by obtaining payment for services not actually delivered by utilizing such techniques as:

- Creating false records by entering fraudulent delivery times into its tracking system so as to make it appear packages were delivered on time when they were not;

- Falsely representing to the federal, state and local government customers that nonexistent security delays caused the failure of service;
- Falsely representing to federal, state and local government customers that the customers had requested later deliveries when they had not.

2. From at least 2004, UPS employed these and other techniques to make false claims amounting to hundreds of millions of dollars as well as to avoid paying its promised money-back guarantee to federal, state and local government customers.

3. These schemes allow UPS to subsidize its delivery service costs by putting government customers last and servicing its non-government customers first.

4. These schemes also allow UPS to avoid ever paying its money-back guarantee for late deliveries.

5. Relator Robert K. Fulk is uniquely qualified to assist the United States in uncovering this fraud as his employment experience with UPS includes both working as a delivery driver as well as working in management as an Air, Driver, Pre-Load and Local Sort Operations Supervisor. Relator is the original source of the facts and information hereinafter set forth concerning the activities of the Defendants. The facts averred herein are based upon Relator's direct, independent, and personal knowledge, upon information and belief, and also upon documents in his possession.

II. PARTIES

6. Relator Robert K. Fulk is a resident of the Commonwealth of Virginia.

7. UPS is a corporation with its principal place of business in Sandy Springs, Georgia. Defendants are principally engaged in providing business services, including packing, shipping, and transportation. Defendants conduct business in more than 220 countries and territories, including the United States, and the Commonwealth of Virginia.

III. JURISDICTION AND VENUE

8. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1367 and 31 U.S.C. § 3732, the last of which specifically confers jurisdiction on this Court for actions brought pursuant to 31 U.S.C. §§ 3729 and 3730. Under 31 U.S.C. § 3730(e) as amended, there has been no statutorily relevant public disclosure of the “allegations or transactions” in this Complaint. Relator Fulk moreover qualifies under that section of the False Claims Act as an “original source” of the allegations in this Complaint even had such a public disclosure occurred.

9. Upon the filing of this complaint, Relator Fulk shall concurrently serve upon the Attorney General of the United States and the United States Attorney for the Eastern District of Virginia, the Plaintiff States’ Attorneys Generals’ offices (or other State offices designated by statute), the city clerk for the City of Chicago, and the New York City Department of Investigation this complaint and a disclosure statement summarizing substantially all material facts and information relevant to this case pursuant to 31 U.S.C. § 3730(b)(2). This disclosure statement is supported by material evidence known to Relator at his filing establishing the existence of Defendants’ false claims. Because the statement includes attorney-client communications and work product of Relator’s attorneys, and is submitted to the Attorney General and to the United States Attorney in their capacity as potential co-counsel in the litigation, the Relator understands this disclosure to be confidential and the initial disclosure statement and all documents provided therewith, and all supplements thereto, are incorporated herein by reference.

10. This Court has personal jurisdiction and venue over the Defendants pursuant to 28 U.S.C. § 1391(b) and 31 U.S.C. § 3732(a) because those sections authorize nationwide service of process and because acts proscribed by 31 U.S.C. § 3729 *et seq.* and complained of herein took place in this district. Moreover, at all times material and relevant, Defendants could be found,

resided and transacted business in this District, and continue to do so. This Court has supplemental jurisdiction over the State and City law claims pursuant to 28 U.S.C. § 1367(a).

IV. BACKGROUND

11. Defendants UPS offer ground delivery and express package services within the United States, including: UPS Next Day Air Early A.M. (delivery time guaranteed for as early as 8:00 a.m. the following business day, depending on the zip code); UPS Next Day Air (delivery time guaranteed for as early as 10:30 a.m. the following business day, depending on the zip code); and UPS Next Day Air Saver (delivery time guaranteed for as early as 3:00 p.m. the next business day, depending on the zip code).

12. Defendants UPS offer international express and ground package services, including: UPS Express Critical (delivery date and time provided and guaranteed when order is placed); UPS Worldwide Express Plus (1-3 business days delivery time guaranteed for as early as 8:30 a.m.); and UPS Worldwide Express (1-3 business days delivery time guaranteed for as early as 10:30 a.m.).

13. Prices for both domestic and international UPS services are based on package weight, shipment dimensions, destination and type of service purchased, plus special fees and surcharges, including fuel surcharges, multiple-piece shipments, oversize packages, and re-delivery service.

14. A large percentage of Defendants' business consists of delivery services contracted for and paid for by the United States, Plaintiff States and Local Governments. Upon information and belief, Defendants' annual gross revenue from government contracts amounts to hundreds of millions of dollars.

15. A large percentage of Defendants' business consists of delivery services contracted for and paid for by government contractors who pass the cost of these services through to the United States, Plaintiff States and Local Governments. Upon information and

belief, Defendants' annual gross revenues from government contractors who then pass the cost of Defendants' services onto the government amount to many millions of dollars.

16. When the United States, Plaintiff States and Local Governments contract with UPS for delivery services, a shipping label is filled out for each package, indicating such information as the destination, class of service and billing information. The class of service purchased indicates the delivery time for which the customer has contracted. For example, if the customer has purchased UPS Next Day Air with a guarantee time of 10:30 a.m., then the package is guaranteed to be delivered by 10:30 a.m. the following morning.

17. Each package handled by UPS is assigned a tracking number, also known as a bar code, at the time the sender gives the package to UPS. UPS drivers scan the bar codes on the packages at the time the packages are actually delivered to the customer. The tracking system allows UPS to make a record of any delays that may occur in delivery. If a delay does occur, then UPS is obligated to refund a customer.

18. UPS promises its customers that a failure to deliver on-time will entitle the customer to a refund. UPS defines a failure to deliver on time as any time the service occurs after the agreed upon delivery commitment time for the selected service and destination.

19. A limited number of exceptions exist to UPS's service guarantee including delays caused by bad weather, a bad address on the package, or delays caused by security procedures at the delivery location. A delay in delivery may also occur where the recipient of a package has requested a later delivery time than the time originally contracted for. This exception is referred to as a "request late."

V. APPLICABLE LAW

20. This action to recover damages and civil penalties on behalf of the United States of America and the Plaintiff States and Local Governments arises from false and/or fraudulent records, statements and claims made, used and caused to be made, used or presented by

Defendants and/or their agents, employees and co-conspirators in violation of the Federal Civil False Claims Act, 31 U.S.C. § 3729 et seq., as amended (“the FCA” or “the Act”) and its state-law and city-law counterparts: the District of Columbia Procurement Reform Amendment Act, D.C. Code Ann. § 1-1188.13 et seq.; the California False Claims Act, Cal. Gov Code § 12650 et seq.; the Delaware False Claims and False Reporting Act, 6 Del. C. § 1201 et seq.; the Florida False Claims Act, Fla. Stat. Ann. § 68.081 et seq.; the Hawaii False Claims Act, Haw. Rev. Stat. § 661-21 et seq.; the Illinois Whistleblower Reward and Protection Act, 740 Ill. Comp. Stat. § 175/1-8; the Indiana False Claims and Whistleblower Protection Act, Indiana Code 5-11-5.5 et seq.; the Massachusetts False Claims Law, Mass. Gen. Laws ch. 12 § 5 et seq.; the Minnesota False Claims Act, Minn. Stat. § 15C.01 et seq.; the Montana False Claims Act, 2005 Mont. Code, Ch. 465; the Nevada False Claims Act, Nev. Rev. Stat. Ann. § 357.010 et seq.; the New Hampshire False Claims Act, § 167:61-b et seq.; the New Jersey False Claims Act, N.J. STAT. § 2A:32C-1; the New Mexico Medicaid False Claims Act, N.M. Stat. Ann. § 27-2F-1 et seq.; the New Mexico Fraud Against Taxpayers Act, N.M. Stat. § 44-9-1 et seq.; the New York False Claims Act, State Finance Law. § 187 et seq.; the North Carolina False Claims Act, N.C. Gen. Stat § 1-605 et seq.; the Rhode Island False Claims Act, R.I. Gen. Laws § 9-1.1-1, et seq.; the Tennessee False Claims Act Tenn. Code Ann. § 4-18-101 et seq.; the Virginia Fraud Against Taxpayers Act, Va. Code Ann. § 8.01-216.1 et seq., the Chicago False Claims Act, Chicago Municipal Code, ch. 1-22 et seq., and the New York City False Claims Act, N.Y.C. Admin. Code § 7-801, et seq.

VI. ALLEGATIONS

21. Since at least 2004, when Relator began working for UPS, and for at least some period of time preceding 2004, UPS began using a number of fraudulent methods to falsely conceal the late delivery of packages. These methods include: entering false data showing on-time delivery of packages before the package’s arrival at its delivery destination; placing a false

reason in the tracking system to excuse a late delivery, for example entering into the system information indicating that the delivery was delayed by security procedures at the destination location when it was not and even before the driver had arrived at that location; blaming a late delivery on bad weather when weather played no part in the delayed delivery; or blaming the late delivery on a customer request when no such request was made. This fraudulent conduct is ongoing.

22. UPS presents a false claim to the United States and to the Plaintiff States and Local Governments each time it seeks payment for a delivery service not provided. Hundreds of thousands of these false claims are presented each day by UPS to the United States and to the Plaintiff States and Local Governments.

23. The systematic presentation of these false claims to the United States, Plaintiff States and Local Governments over a period of years represents a deliberate scheme on the part of UPS to overcharge the United States and the Plaintiff States and Local Governments and nets UPS millions of dollars a year.

24. This scheme not only fraudulently nets UPS millions of dollars directly from the United States and the Plaintiff States and Local Governments but also allows UPS to subsidize its other non-government business at the expense of taxpayers.

25. UPS creates false records as part of its scheme to overcharge the United States and Plaintiff States and Local Governments by entering false delivery times into its tracking system via what is known as the DIAD Board, indicating that the package was delivered on time when it was not. UPS also creates false records by entering false excuses for delayed deliveries into the DIAD Board.

26. UPS makes false representations to government customers regarding its failure to provide certain classes of service when it claims that a delay in delivery to a government facility was caused by a reason, such as a security delay, bad weather or a delay requested by the

customer, when in fact the delay was caused by UPS's own action or inaction. These false representations are also used by UPS to avoid living up to its service guarantee and avoid having to refund any payments to its government customers, including the United States and Plaintiff States and Local Governments.

27. Despite the fact that UPS has failed in some instances for years to deliver on time service to certain government installations, it continues to charge the United States and Plaintiff States and Local Governments millions upon millions of dollars for a service it never delivers.

28. In addition, government contractors who pay for failed service pass on their costs to the United States and Plaintiff States and Local Governments so that UPS is directly responsible for causing the contractors to submit false claims to the United States and Plaintiff States and Local Governments.

29. UPS benefits from each and every false claim and statement submitted for a failed delivery service by charging and collecting for a service it does not provide. These false claims for failed deliveries allow UPS to illegally reap millions if not hundreds of millions of dollars a year from the United States and Plaintiff States and Local Governments.

30. The false claims and statements allow UPS to subsidize its service to non-government customers. Deliveries to non-government customers can be prioritized over those for government customers because UPS depends on not having to deliver its government customer's packages on time. This not only allows UPS to provide better service to its non-government customers at the expense of the United States and the Plaintiff States and Local Governments but also increases UPS's profits from the non-government sector by reducing the likelihood that its non-government deliveries will ever be late and cause UPS to have to provide a refund.

31. UPS's false claims have caused the United States and the Plaintiff States and Local Governments enormous monetary losses by asking for payment for classes of delivery

service that were never provided. Further loss has occurred because the UPS service failures have inconvenienced government workers and sometimes even impeded those workers from performing their jobs.

VII. CLAIMS FOR RELIEF

COUNT ONE

**(Violations of Federal False Claims Act)
(U.S.C. § 3729(a)(2)(A))**

32. Relator repeats and incorporates by reference the allegations contained in Paragraphs 1 through 31 of this Complaint as if fully set forth herein. This Count is brought by Relator Fulk in the name of the United States under the qui tam provisions of 31 U.S.C. §3730 et seq. for Defendants' violations of 31 U.S.C. § 3729 et seq. As more particularly set forth in the foregoing paragraphs, by virtue of the acts and omissions alleged herein Defendants knowingly caused to be presented directly or indirectly to officers or employees of the United States Government false or fraudulent claims for payment or approval, in violation of 31 U.S.C. § 3729(a)(2)(A).

33. Plaintiff United States, unaware of the falsity of the claims and/or statements caused to be made by Defendants, and in reliance on the accuracy thereof, have paid and approved and continue to pay and approve, claims that were ineligible for reimbursement and which would not have been paid or approved if any part of the truth were known.

34. The amounts of the false or fraudulent claims caused by the Defendants to be submitted to the United States were material. By reason of Defendants' wrongful conduct, the United States has suffered substantial losses in an amount to be proven at trial, and therefore is entitled to multiple damages under the False Claims Act, to be determined at trial, plus civil penalties of \$5,500 to \$11,000 for each such false claim caused to be submitted by Defendants.

35. Relator believes and avers that he is an original source of the facts and information upon which this action is based.

COUNT TWO

**(Violations of False Claims Act)
(U.S.C. § 3729(a)(2)(B))**

36. Relator repeats and incorporates by reference the allegations contained in Paragraphs 1 through 35 of this Complaint as if fully set forth herein. This Count is brought by Relator Fulk in the name of the United States under the qui tam provisions of 31 U.S.C. § 3730 *et seq.* for Defendants' violations of 31 U.S.C. § 3729 *et seq.* As more particularly set forth in the foregoing paragraphs, by virtue of the acts and omissions alleged herein, Defendants knowingly made, used, or caused to be made or used false records or statements to get false or fraudulent claims paid or approved by the United States in violation of 31 U.S.C. § 3729(a)(2)(B).

37. Plaintiff United States, unaware of the falsity of the records and/or statements caused to be made and used by Defendants, and in reliance on the accuracy thereof, have paid and approved, and continue to pay and approve, claims that were ineligible for reimbursement and which would not have been paid or approved if any part of the truth were known.

38. The amounts of the false or fraudulent claims caused by the Defendants to be submitted to the United States were material. By reason of Defendants' wrongful conduct, the United States has suffered substantial losses in an amount to be proven at trial, and therefore is entitled to multiple damages under the False Claims Act, to be determined at trial, plus a civil penalty of \$5,500 to \$11,000 for each such false statement caused to be made or used by Defendants.

39. Relator believes and avers that he is an original source of the facts and information on which this action is based.

COUNT THREE

**(Violations of the False Claims Act)
(U.S.C. § 3729(a)(2)(G))**

40. Relator repeats and incorporates by reference the allegations contained in Paragraphs 1 through 39 of this Complaint as if fully set forth herein. This Count is brought by Relator Fulk in the name of the United States under the qui tam provisions of 31 U.S.C. § 3730 et seq. for Defendants' violations of 31 U.S.C. § 3729 et seq. As more particularly set forth in the foregoing paragraphs, by virtue of the acts and omissions alleged herein, Defendants knowingly made, used, or caused to be made or used false records or statements material to an obligation to pay or transmit money or property to the United States, or knowingly concealed or knowingly and improperly avoided or decreased an obligation to pay or transmit money or property to the United States in violation of 31 U.S.C. § 3729(a)(2)(G).

41. Plaintiff United States, unaware of the falsity of the records and/or statements caused to be made and used by Defendants, and in reliance on the accuracy thereof, have paid and approved, and continue to pay and approve, claims that were ineligible for reimbursement and which would not have been paid or approved if any part of the truth were known.

42. The amounts of the false or fraudulent claims caused by the Defendants to be submitted to the United States were material. By reason of Defendants' wrongful conduct, the United States has suffered substantial losses in an amount to be proven at trial, and therefore is entitled to multiple damages under the False Claims Act, to be determined at trial, plus a civil penalty of \$5,500 to \$11,000 for each such false statement caused to be made or used by Defendants.

43. Relator believes and avers that he is an original source of the facts and information on which this action is based.

COUNT FOUR

**(Violations of the False Claims Act)
(U.S.C. § 3729(a)(2)(C))**

44. Relator repeats and incorporates by reference the allegations contained in Paragraphs 1 through 43 of this Complaint as if fully set forth herein. This Count is brought by Relator Fulk in the name of the United States under the qui tam provisions of 31 U.S.C. § 3730 et seq. for Defendants' violations of 31 U.S.C. § 3729 et seq. As more particularly set forth in the foregoing paragraphs, by virtue of the acts and omissions alleged herein, Defendants conspired to knowingly cause to be presented directly or indirectly to officers or employees of the United States Government false or fraudulent claims for payment or approval, in violation of 31 U.S.C. § 3729(a)(2)(A).

45. As more particularly set forth in the foregoing paragraphs, by virtue of the acts and omissions alleged herein, Defendants conspired to knowingly make, use, or caused to be made or used false records or statements to get false or fraudulent claims paid or approved by the United States in violation of 31 U.S.C. § 3729(a)(2)(B).

46. As more particularly set forth in the foregoing paragraphs, by virtue of the acts and omissions alleged herein, Defendants conspired to knowingly make, use, or cause to be made or used false records or statements material to an obligation to pay or transmit money or property to the United States, or knowingly conceal or knowingly and improperly avoid or decrease an obligation to pay or transmit money or property to the United States in violation of 31 U.S.C. § 3729(a)(2)(G).

47. The amounts of the false or fraudulent claims caused by the Defendants to be submitted to the United States were material. By reason of Defendants' wrongful and conspiratorial conduct, the United States has suffered substantial losses in an amount to be proven at trial, and therefore is entitled to multiple damages under the False Claims Act, to be

determined at trial, plus a civil penalty of \$5,500 to \$11,000 for each such false statement caused to be made or used by Defendants.

48. Relator believes and avers that he is an original source of the facts and information on which this action is based.

COUNT FIVE

**(District of Columbia False Claims Act)
(D.C. Code Ann. § 2-308.03 et seq.)**

49. Relator repeats and incorporates by reference the allegations contained in paragraphs 1 through 48 of this Complaint as if fully set forth herein.

50. By virtue of the acts described above, Defendants knowingly presented or caused to be presented, false or fraudulent claims to the District of Columbia Government for payment or approval.

51. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used false records and statements, and omitted material facts, to induce the District of Columbia Government to approve and pay such false and fraudulent claims.

52. The District of Columbia Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendants, paid and continues to pay the claims that would not be paid but for the acts and/or conduct of Defendants as alleged herein.

53. By reason of the Defendants' acts, the District of Columbia has been damaged, and continues to be damaged, in substantial amounts to be determined at trial.

54. Pursuant to D.C. Code Ann. § 2-308.14, the District of Columbia is entitled to three times the amount of actual damages plus the maximum penalty of \$10,000 for each and every false or fraudulent claim, record or statement made, used, presented or caused to be made, used or presented by Defendants.

COUNT SIX

**(California False Claims Act)
(Cal. Govt. Code § 12651 et seq.)**

55. Relator repeats and incorporates by reference the allegations contained in paragraphs 1 through 54 of this Complaint as if fully set forth herein.

56. By virtue of the acts described above, Defendants knowingly presented or caused to be presented, false or fraudulent claims to the California State Government for payment or approval.

57. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used false records and statements, and omitted material facts, to induce the California State Government to approve and pay such false and fraudulent claims.

58. The California State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendants, paid and continues to pay the claims that would not be paid but for the acts and/or conduct of Defendants as alleged herein.

59. By reason of the Defendants' acts, the State of California has been damaged, and continues to be damaged, in substantial amounts to be determined at trial.

60. Pursuant to Cal. Govt. Code § 12651(a), the State of California is entitled to three times the amount of actual damages plus the maximum penalty of \$10,000 for each and every false or fraudulent claim, record or statement made, used, presented or caused to be made, used or presented by Defendants.

COUNT SEVEN

**(Delaware False Claims and Reporting Act)
(Del Code Ann. tit. 6, § 1201 et seq.)**

61. Relator repeats and incorporates by reference the allegations contained in paragraphs 1 through 60 of this Complaint as if fully set forth herein.

62. By virtue of the acts described above, Defendants knowingly presented or caused to be presented, false or fraudulent claims to the Delaware State Government for payment or approval.

63. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used false records and statements, and omitted material facts, to induce the Delaware State Government to approve and pay such false and fraudulent claims.

64. The Delaware State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendants, paid and continues to pay the claims that would not be paid but for the acts and/or conduct of Defendants as alleged herein.

65. By reason of the Defendants' acts, the State of Delaware has been damaged, and continues to be damaged, in substantial amounts to be determined at trial.

66. Pursuant to Del. Code Ann. tit. 6, § 1201(a), the State of Delaware is entitled to three times the amount of actual damages plus the maximum penalty of \$11,000 for each and every false or fraudulent claim, record or statement made, used, presented or caused to be made, used or presented by Defendants.

COUNT EIGHT

**(Florida False Claims Act)
(Fla. Stat. Ann. § 68.081 et seq.)**

67. Relator repeats and incorporates by reference the allegations contained in paragraphs 1 through 66 of this Complaint as if fully set forth herein.

68. By virtue of the acts described above, Defendants knowingly presented or caused to be presented, false or fraudulent claims to the Florida State Government for payment or approval.

69. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used false records and statements, and omitted material facts, to induce the Florida State Government to approve and pay such false and fraudulent claims.

70. The Florida State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendants, paid and continues to pay the claims that would not be paid but for the acts and/or conduct of Defendants as alleged herein.

71. By reason of the Defendants' acts, the State of Florida has been damaged, and continues to be damaged, in substantial amounts to be determined at trial.

72. Pursuant to Fla. Stat. Ann. § 68.082(2), the State of Florida is entitled to three times the amount of actual damages plus the maximum penalty of \$11,000 for each and every false or fraudulent claim, record or statement made, used, presented or caused to be made, used or presented by Defendants.

COUNT NINE

(Hawaii False Claims Act) (Haw. Rev. Stat. § 661-21 et seq.)

73. Relator repeats and incorporates by reference the allegations contained in paragraphs 1 through 72 of this Complaint as if fully set forth herein.

74. By virtue of the acts described above, Defendants knowingly presented or caused to be presented, false or fraudulent claims to the Hawaii State Government for payment or approval.

75. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used false records and statements, and omitted material facts, to induce the Hawaii State Government to approve and pay such false and fraudulent claims.

76. The Hawaii State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendants, paid and continues to pay the claims that would not be paid but for the acts and/or conduct of Defendants as alleged herein.

77. By reason of the Defendants' acts, the State of Hawaii has been damaged, and continues to be damaged, in substantial amounts to be determined at trial.

78. Pursuant to Haw. Rev. Stat. § 661-21(a), the State of Hawaii is entitled to three times the amount of actual damages plus the maximum penalty of \$10,000 for each and every false or fraudulent claim, record or statement made, used, presented or caused to be made, used or presented by Defendants.

COUNT TEN

**(Illinois Whistleblower Reward and Protection Act)
(740 Ill. Comp. Stat. § 175/1 et seq.)**

79. Relator repeats and incorporates by reference the allegations contained in paragraphs 1 through 78 of this Complaint as if fully set forth herein.

80. By virtue of the acts described above, Defendants knowingly presented or caused to be presented, false or fraudulent claims to the Illinois State Government for payment or approval.

81. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used false records and statements, and omitted material facts, to induce the Illinois State Government to approve and pay such false and fraudulent claims.

82. The Illinois State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendants, paid and continues to pay the claims that would not be paid but for the acts and/or conduct of Defendants as alleged herein.

83. By reason of the Defendants' acts, the State of Illinois has been damaged, and continues to be damaged, in substantial amounts to be determined at trial.

84. Pursuant to 740 Ill. Comp. Stat. § 175/3(a), the State of Illinois is entitled to three times the amount of actual damages plus the maximum penalty of \$11,000 for each and every false or fraudulent claim, record or statement made, used, presented or caused to be made, used or presented by Defendants.

COUNT ELEVEN

**(Indiana False Claims and Whistleblower Protection Act)
(Ind. Code § 5-11-5.5-1 et seq.)**

85. Relator repeats and incorporates by reference the allegations contained in paragraphs 1 through 84 of this Complaint as if fully set forth herein.

86. By virtue of the acts described above, Defendants knowingly presented or caused to be presented, false or fraudulent claims to the Indiana State Government for payment or approval.

87. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used false records and statements, and omitted material facts, to induce the Indiana State Government to approve and pay such false and fraudulent claims.

88. The Indiana State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendants, paid and continues to pay the claims that would not be paid but for the acts and/or conduct of Defendants as alleged herein.

89. By reason of the Defendants' acts, the State of Indiana has been damaged, and continues to be damaged, in substantial amounts to be determined at trial.

90. Pursuant to Ind. Code § 5-11-5.5-2(b), the State of Indiana is entitled to three times the amount of actual damages plus at least \$5,000 for each and every false or fraudulent

claim, record or statement made, used, presented or caused to be made, used or presented by Defendants.

COUNT TWELVE

**(Massachusetts False Claims Law)
(Mass. Gen. Laws ch. 12, § 5A et seq.)**

91. Relator repeats and incorporates by reference the allegations contained in paragraphs 1 through 90 of this Complaint as if fully set forth herein.

92. By virtue of the acts described above, Defendants knowingly presented or caused to be presented, false or fraudulent claims to the Massachusetts Commonwealth Government for payment or approval.

93. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used false records and statements, and omitted material facts, to induce the Massachusetts Commonwealth Government to approve and pay such false and fraudulent claims.

94. The Massachusetts Commonwealth Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendants, paid and continues to pay the claims that would not be paid but for the acts and/or conduct of Defendants as alleged herein.

95. By reason of the Defendants' acts, the Commonwealth of Massachusetts has been damaged, and continues to be damaged, in substantial amounts to be determined at trial.

96. Pursuant to Mass. Gen. Laws ch. 12, § 5B, the Commonwealth of Massachusetts is entitled to three times the amount of actual damages plus the maximum penalty of \$10,000 for each and every false or fraudulent claim, record or statement made, used, presented or caused to be made, used or presented by Defendants.

COUNT THIRTEEN

**(Montana False Claims Act)
(Mont. Code, Ch. 465 et seq.)**

97. Relator repeats and incorporates by reference the allegations contained in paragraphs 1 through 96 of this Complaint as if fully set forth herein.

98. By virtue of the acts described above, Defendants knowingly presented or caused to be presented, false or fraudulent claims to the State of Montana for payment or approval.

99. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used false records and statements, and omitted material facts, to induce the Montana State Government to approve and pay such false and fraudulent claims.

100. The Montana State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendants, paid and continues to pay the claims that would not be paid but for the acts and/or conduct of Defendants as alleged herein.

101. By reason of the Defendants' acts, the State of Montana has been damaged, and continues to be damaged, in substantial amounts to be determined at trial.

102. Pursuant to Mont. Code, Ch. 465, the State of Montana is entitled to a civil penalty equal to the full amount received by the person benefiting from the fraud plus triple the amount of damages suffered by the state as a result of the conduct by the person.

COUNT FOURTEEN

**(Nevada False Claims Act)
(Nev. Rev. Stat. § 357.010 et seq.)**

103. Relator repeats and incorporates by reference the allegations contained in paragraphs 1 through 102 of this Complaint as if fully set forth herein.

104. By virtue of the acts described above, Defendants knowingly presented or caused to be presented, false or fraudulent claims to the Nevada State Government for payment or approval.

105. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used false records and statements, and omitted material facts, to induce the Nevada State Government to approve and pay such false and fraudulent claims.

106. The Nevada State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendants, paid and continues to pay the claims that would not be paid but for the acts and/or conduct of Defendants as alleged herein.

107. By reason of the Defendants' acts, the State of Nevada has been damaged, and continues to be damaged, in substantial amounts to be determined at trial.

108. Pursuant to Nev. Rev. Stat. § 357.040(1), the State of Nevada is entitled to three times the amount of actual damages plus the maximum penalty of \$10,000 for each and every false or fraudulent claim, record or statement made, used, presented or caused to be made, used or presented by Defendants.

COUNT FIFTEEN

(New Hampshire False Claims Act) (N.H. Rev. Stat. Ann. § 167:61-b et seq.)

109. Relator repeats and incorporates by reference the allegations contained in paragraphs 1 through 108 of this Complaint as if fully set forth herein.

110. By virtue of the acts described above, Defendants knowingly presented or caused to be presented, false or fraudulent claims to the New Hampshire State Government for payment or approval.

111. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used false records and statements, and omitted material facts, to induce the New Hampshire State Government to approve and pay such false and fraudulent claims.

112. The New Hampshire State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendants, paid and continues to pay the claims that would not be paid but for the acts and/or conduct of Defendants as alleged herein.

113. By reason of the Defendants' acts, the State of New Hampshire has been damaged, and continues to be damaged, in substantial amounts to be determined at trial.

114. Pursuant to § 167:61-b, the State of New Hampshire is entitled to three times the amount of actual damages plus the maximum penalty of \$10,000 for each and every false or fraudulent claim, record or statement made, used, presented or caused to be made, used or presented by Defendants.

COUNT SIXTEEN

**(New Jersey False Claims Act)
(N.J. Stat. Ann. § 2A:32C-1 et seq.)**

115. Relator repeats and incorporates by reference the allegations contained in paragraphs 1 through 114 of this Complaint as if fully set forth herein.

116. By virtue of the acts described above, Defendants knowingly presented or caused to be presented, false or fraudulent claims to the New Jersey State Government for payment or approval.

117. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used false records and statements, and omitted material facts, to induce the New Jersey State Government to approve and pay such false and fraudulent claims.

118. The New Jersey State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendants, paid and continues to pay the claims that would not be paid but for the acts and/or conduct of Defendants as alleged herein.

119. By reason of the Defendants' acts, the State of New Jersey has been damaged, and continues to be damaged, in substantial amounts to be determined at trial.

120. Pursuant to N.J. Stat. Ann. § 2A:32C-3, the State of New Jersey is entitled to three times the amount of actual damages plus the maximum penalty of \$11,000 for each and every false or fraudulent claim, record or statement made, used, presented or caused to be made, used or presented by Defendants.

COUNT SEVENTEEN

(New Mexico Fraud Against Tax Payers Act) (N.M. Stat. Ann. § 44-9-1 et seq.)

121. Relator repeats and incorporates by reference the allegations contained in paragraphs 1 through 120 of this Complaint as if fully set forth herein.

122. By virtue of the acts described above, Defendants knowingly presented or caused to be presented, false or fraudulent claims to the New Mexico State Government for payment or approval.

123. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used false records and statements, and omitted material facts, to induce the New Mexico State Government to approve and pay such false and fraudulent claims.

124. The New Mexico State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendants, paid and continues to pay the claims that would not be paid but for the acts and/or conduct of Defendants as alleged herein.

125. By reason of the Defendants' acts, the State of New Mexico has been damaged, and continues to be damaged, in substantial amounts to be determined at trial.

126. Pursuant to N.M. Stat. Ann. § 44-9-3, the State of New Mexico is entitled to three times the amount of actual damages plus the maximum penalty of \$10,000 for each and every false or fraudulent claim, record or statement made, used, presented or caused to be made, used or presented by Defendants.

COUNT EIGHTEEN

(New York False Claims Act) (N.Y. State Fin. Law § 187 et seq.)

127. Relator repeats and incorporates by reference the allegations contained in paragraphs 1 through 126 of this Complaint as if fully set forth herein.

128. By virtue of the acts described above, Defendants knowingly presented or caused to be presented, false or fraudulent claims to the New York State Government for payment or approval.

129. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used false records and statements, and omitted material facts, to induce the New York State Government to approve and pay such false and fraudulent claims.

130. The New York State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendants, paid and continues to pay the claims that would not be paid but for the acts and/or conduct of Defendants as alleged herein.

131. By reason of the Defendants' acts, the State of New York has been damaged, and continues to be damaged, in substantial amounts to be determined at trial.

132. Pursuant to N.Y. State Fin. Law § 189, the State of New York is entitled to three times the amount of actual damages plus the maximum penalty of \$12,000 for each and every

false or fraudulent claim, record or statement made, used, presented or caused to be made, used or presented by Defendants.

COUNT NINETEEN

**(North Carolina False Claims Act)
(N.C. Gen. Stat. § 1-605 et seq.)**

133. Relator repeats and incorporates by reference the allegations contained in paragraphs 1 through 132 of this Complaint.

134. By virtue of the acts described above, Defendants knowingly presented or caused to be presented, false or fraudulent claims to the North Carolina State Government for payment or approval.

135. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used false records and statements, and omitted material facts, to induce the North Carolina State Government to approve and pay such false and fraudulent claims.

136. By virtue of the acts described above, Defendants conspired with each other and with others to defraud North Carolina by inducing the North Carolina State Government to pay or approve false or fraudulent claims.

137. The North Carolina State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by defendants, paid and continues to pay the claims that would not be paid but for the acts and/or conduct of Defendants as alleged herein.

138. By reason of the Defendants' acts, the State of North Carolina has been damaged, and continues to be damaged, in substantial amount to be determined at trial.

139. Pursuant to N.C. Gen. Stat. § 1-607(a), The State of North Carolina is entitled to three times the amount of the actual damages plus the maximum penalty of \$11,000 for each and

every false or fraudulent claim, record or statement made, used, presented or caused to be made, used or presented by defendants.

COUNT TWENTY

**(The State False Claims Act (Rhode Island)
(R.I. Gen. Laws § 9-1.1-1 et seq.)**

140. Relator repeats and incorporates by reference the allegations contained in paragraphs 1 through 139 of this Complaint as if fully set forth herein.

141. By virtue of the acts described above, Defendants knowingly presented or caused to be presented, false or fraudulent claims to the Rhode Island State Government for payment or approval.

142. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used false records and statements, and omitted material facts, to induce the Rhode Island State Government to approve and pay such false and fraudulent claims.

143. The Rhode Island State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendants, paid and continues to pay the claims that would not be paid but for the acts and/or conduct of Defendants as alleged herein.

144. By reason of the Defendants' acts, the State of Rhode Island has been damaged, and continues to be damaged, in substantial amounts to be determined at trial.

145. Pursuant to R.I. Gen. Laws § 9-1.1-3, the State of Rhode Island is entitled to three times the amount of actual damages plus the maximum penalty of \$10,000 for each and every false or fraudulent claim, record or statement made, used, presented or caused to be made, used or presented by Defendants.

COUNT TWENTY-ONE

**(Tennessee False Claims Act)
(Tenn. Code Ann. § 4-18-101 et seq.)**

146. Relator repeats and incorporates by reference the allegations contained in paragraphs 1 through 145 of this Complaint as if fully set forth herein.

147. By virtue of the acts described above, Defendants knowingly presented or caused to be presented, false or fraudulent claims to the Tennessee State Government for payment or approval.

148. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used false records and statements, and omitted material facts, to induce the Tennessee State Government to approve and pay such false and fraudulent claims.

149. The Tennessee State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendants, paid and continues to pay the claims that would not be paid but for the acts and/or conduct of Defendants as alleged herein.

150. By reason of Defendants' acts, the State of Tennessee has been damaged, and continues to be damaged, in substantial amounts to be determined at trial.

151. Pursuant to Tenn. Code § 4-18-103(a), the State of Tennessee is entitled to three times the amount of actual damages plus the maximum penalty of \$10,000 for each and every false or fraudulent claim, record or statement made, used, presented or caused to be made, used or presented by Defendants.

COUNT TWENTY-TWO

**(Virginia Fraud Against Taxpayers Act)
(Va. Code Ann. § 8.01-216.1 et seq.)**

152. Relator repeats and incorporates by reference the allegations contained in paragraphs 1 through 151 of this Complaint as if fully set forth herein.

153. By virtue of the acts described above, Defendants knowingly presented or caused to be presented, false or fraudulent claims to the State of Virginia for payment or approval.

154. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used false records and statements, and omitted material facts, to induce the State of Virginia to approve and pay such false and fraudulent claims.

155. The State of Virginia, unaware of the falsity of the records, statements and claims made; used, presented or caused to be made, used or presented by Defendants, paid and continues to pay the claims that would not be paid but for the acts and/or conduct of Defendants as alleged herein.

156. By reason of Defendants' acts, the State of Virginia has been damaged, and continues to be damaged, in substantial amounts to be determined at trial.

157. Pursuant to Va. Code § 8.01-216.3(A), the State of Virginia is entitled to three times the amount of actual damages plus the maximum penalty of \$10,000 for each and every false or fraudulent claim, record or statement made, used, presented or caused to be made, used or presented by Defendants.

COUNT TWENTY-THREE

**(Chicago False Claims Act)
(Chicago Municipal Code, ch. 1-22 et seq.)**

158. Relator repeats and incorporates by reference the allegations contained in paragraphs 1 through 157 of this Complaint as if fully set forth herein.

159. By virtue of the acts described above, Defendants knowingly presented or caused to be presented, false or fraudulent claims to the City of Chicago for payment or approval.

160. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used false records and statements, and omitted material facts, to induce the City of Chicago to approve and pay such false and fraudulent claims.

161. The City of Chicago, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendants, paid and continues to pay the claims that would not be paid but for the acts and/or conduct of Defendants as alleged herein.

162. By reason of Defendants' acts, the City of Chicago has been damaged, and continues to be damaged, in substantial amounts to be determined at trial.

163. Pursuant to Chicago Municipal Code, ch. 1-22-020, the City of Chicago is entitled to three times the amount of actual damages plus the civil penalty of not less than \$5,000 and not more than \$10,000 for each and every false or fraudulent claim, record or statement made, used, presented or caused to be made, used or presented by Defendants.

COUNT TWENTY-FOUR

**(New York City False Claims Act)
(N.Y.C. Admin. Code § 7-801 et seq.)**

164. Relator repeats and incorporates by reference the allegations contained in paragraphs 1 through 163 of this Complaint as if fully set forth herein.

165. By virtue of the acts described above, Defendants knowingly presented or caused to be presented, false or fraudulent claims to New York City for payment or approval.

166. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used false records and statements, and omitted material facts, to induce New York City to approve and pay such false and fraudulent claims.

167. New York City, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendants, paid and continues to pay the claims that would not be paid but for the acts and/or conduct of Defendants as alleged herein.

168. By reason of Defendants' acts, New York City has been damaged, and continues to be damaged, in substantial amounts to be determined at trial.

169. Pursuant to N.Y.C. Admin. Code § 7-803, New York City is entitled to three times the amount of actual damages plus a civil penalty of between \$5,000 and \$15,000 for each and every false or fraudulent claim, record or statement made, used, presented or caused to be made, used or presented by Defendants.

VIII. DEMANDS FOR RELIEF

WHEREFORE, Relator, on behalf of the United States Government and Plaintiff States and Local Governments demands judgment against the above-named Defendants, ordering:

As to the Federal Claims:

a. Pursuant to 31 U.S.C. § 3729(a), Defendants pay an amount equal to three times the amount of damages the United States Government has sustained as a result of Defendants' actions, plus a civil penalty of not less than \$5,500 and not more than \$11,000 for each violation of 31 U.S.C. § 3729 *et seq.*, or such other penalty as the law may permit and/or require for each violation of other laws which governed Defendant's conduct;

b. Relator be awarded his relator's share of the judgment to the maximum amount provided pursuant to 31 U.S.C. § 3730(d) of the False Claims Act and/or any other applicable provision of law;

c. Relator be awarded all costs and expenses of this action, including attorneys' fees as provided by 31 U.S.C. § 3730(d) and any other applicable provision of the law; and

d. Relator and the United States of America be awarded such other and further relief as the Court may deem to be just and proper.

As to the State and City Claims:

e. Relator and each named Plaintiff State and Local Government be awarded statutory damages in an amount equal to three times the amount of actual damages sustained by

each Plaintiff State and Local Government as a result of Defendants' actions, as well as the maximum statutory civil penalty for each violation by Defendants within each Plaintiff State and Local Government, all as provided by: D.C. Code Ann. § 2-308.14; Cal. Govt Code §12651(a); Del. Code Ann. Tit. 6, §1201(a); Fla. Stat. Ann. § 68.082(2); Haw. Rev. Stat. § 661-21(a); 740 Ill. Comp. Stat. §175/3(a); Ind. Code 5-11-5.5-2(b); Mass. Gen. Laws ch. 12 §5B; Mont. Code Ann. § 17-8-403; Nev. Rev. Stat. § 357.040(1); N.H. Rev. Stat. Ann § 167:61-b; N.J. Stat. Ann. § 2A:32C-3; N.M. Stat. Ann. § 44-9-3; N.Y. State Fin. Law. § 189; N.C. Gen. Stat. § 1 – 605; R.I. Gen. Laws § 9-1.1-3; Tenn. Code § 4-18-103; Va. Code Ann. § 8.01-216.3(A); Chicago Municipal Code, ch. 1-22-020; and N.Y.C. Admin. Code § 7-803.

f. Relator be awarded his relator's share of any judgment to the maximum amount provided pursuant to D.C. Code Ann. § 2-308.15; Cal. Govt. Code § 12651; Del Code Ann. tit. 6, § 1205; Fla. Stat. Ann. § 68.085; Haw. Rev. Stat. § 661-27; 740 Ill. Comp. Stat. § 175/4; Ind. Code § 5-11-5.5-6; Mass. Gen. Laws ch. 12, § 5F; Mont. Code Ann. § 17-8-410; Nev. Rev. Stat. § 357.210; N.H. Rev. Stat. Ann. § 167:61-e; N.J. Stat. Ann. § 2A:32C-7; N.M. Stat. Ann. § 44-9-7; N.Y. State Fin. Law § 192; N.C. Gen. Stat. § 1 – 605; R.I. Gen. Laws § 9-1.1-4; Tenn. Code Ann. § 4-18-104(g); Va. Code Ann. § 8.01-216.7; Chicago Municipal Code, ch. 1-22-020; and N.Y.C. Admin. Code § 7-803.

g. Relator be awarded all costs and expenses associated with each of the Plaintiff State and Local Government claims, plus attorney's fees as provided pursuant to: D.C. Code Ann. § 2-308.15; Cal. Govt. Code § 12651; Del Code Ann. tit. 6, § 1205; Fla. Stat. Ann. § 68.085; Haw. Rev. Stat. § 661-27, 740; Ill. Comp. Stat. § 175/4; Ind. Code § 5-11-5.5-6; Mass. Gen. Laws ch. 12, § 5F; Mont. Code Ann. § 17-8-410; Nev. Rev. Stat. § 357.180; N.H. Rev. Stat. Ann. § 167:61-e; N.J. Stat. Ann. § 2A:32C-7; N.M. Stat. Ann. § 44-9-7; N.Y. State Fin. Law § 192; N.C. Gen. Stat. §§ 1 – 605; R.I. Gen. Laws § 9-1.1-4; Tenn. Code Ann. § 4-18-

104(g); Va. Code Ann. § 8.01-216.7; Chicago Municipal Code, ch. 1-22-020; and N.Y.C.

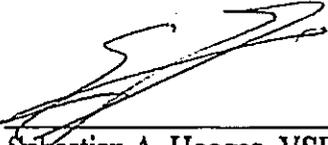
Admin. Code § 7-803.

h. Relator and the Plaintiff States and Local Governments be awarded such other and further relief as the Court may deem to be just and proper.

TRIAL BY JURY

Relator hereby demands a trial by jury as to all issues.

Dated: August 19, 2011

BY: 

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End of Agenda Item