IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES *ex rel.* FLOYD LANDIS,	)	
Plaintiff,	)	No. 10-cv-00976 (CRC)
v.	)	**REDACTED**
TAILWIND SPORTS CORPORATION, *et al.*,	)	
Defendants.	)	

RELATOR'S MEMORANDUM IN OPPOSITION TO 1) LANCE ARMSTRONG'S MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, PARTIAL SUMMARY JUDGMENT AND 2) DEFENDANTS CAPITAL SPORTS & ENTERTAINMENT HOLDINGS, INC., WILLIAM J. STAPLETON, AND BARTON B. KNAGGS' PARTIAL JOINDER IN DEFENDANT LANCE ARMSTRONG'S MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, PARTIAL SUMMARY JUDGMENT AND JOINDER IN UNITED STATES' OPPOSITION TO LANCE ARMSTRONG'S MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, PARTIAL SUMMARY JUDGMENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Regulations

I. INTRODUCTION

To hear the defendants tell the story, the United States should be indebted to them. If not for their conduct, say the defendants, the United States never would have received multiple millions of dollars in media impressions and other so-called benefits that resulted from their scheme. But when all the lawyering and sophistry is stripped away, defendants' argument is just another illusion, for at bottom it assumes the United States should be forced to attribute value to something it never asked for and, indeed, could not have wanted less -- direct and infamous association with notorious dopers, liars and cheats. This is not the law.

What is critical to understand is this is not a case involving the delivery of an inferior part or service, which, though not what was promised, still is something the United States might have valued in some way. Here, however much the defendants may have been willing to cheat to win, the United States wasn't seeking false glory and never would have bargained in the "cold light of morning," as the defendants put it, for what they delivered. For this reason alone, the Court should deny defendants' motion for summary judgment on damages. Moreover, perhaps more pertinently, the Court should take this opportunity to state clearly the policy reasons founded in law that make this result so, disabuse the defendants of their morally-flawed premise, and provide the parties with a framework by which they can move this case forward to final resolution.

Defendants' other arguments regarding implied certification and fraudulent inducement must also fail for the reasons stated herein.

II. SUMMARY OF ARGUMENT

In the motions currently before the Court, defendant Lance Armstrong has moved for summary judgment, or partial summary judgment, against plaintiffs the United States and relator Floyd Landis. ECF 514. The CSE Defendants, *i.e.*, Armstrong's long-time agents and business managers Bill Stapleton and Barton Knaggs and the company they own together Capital Sports and Entertainment Holdings, Inc. ("CSE"), also move for summary judgment by partially joining in Armstrong's motion. ECF 512. In opposition

to both Armstrong's and the CSE Defendants' motions, relator hereby joins in the United States' opposition to Armstrong's motion (as it relates to claims under the False Claims Act) and also files this separate opposition.

A. The United States' Damages Are the Full Amount Paid Under the Sponsorship Agreements.

Defendant Armstrong argues that the United States has not suffered any damages. ECF 514-1, Memorandum of Points and Authorities in Support of Lance Armstrong's Motion for Summary Judgment or, In the Alternative, Partial Summary Judgment ("Armstrong Memorandum") at 28-32. In fact, the United States has been damaged in the full amount paid under the Sponsorship Agreements because the services delivered under the contracts had no value to the United States.

The CSE Defendants have joined in Armstrong's argument regarding damages and also argue that the four post-June 10, 2004 claims currently at issue with respect to them were merely "reimbursements" for "hospitality-related services." ECF 512, Defendants Capital Sports & Entertainment Holdings, Inc., William J. Stapleton, and Barton B. Knaggs Partial Joinder in Defendant Lance Armstrong's Motion for Summary Judgment or, In the Alternative, Partial Summary Judgment and Memorandum of Points and Authorities in Support Thereof ("CSE Memorandum") at 3. The Court, however, has already rejected the CSE Defendants' attempt to distinguish their "reimbursement" claims from other claims under the Sponsorship Agreement, and a reasonable jury could find that any goods and services provided under the Sponsorship Agreements had no value to the United States due to the team's cheating and doping.[1]

B. Plaintiffs' Implied Certification Theory Satisfies the "Falsity" Element.

Armstrong and the CSE Defendants further argue that plaintiffs cannot establish the falsity element of their claims under the False Claims Act, 31 U.S.C. §§ 3729, *et seq.* ("FCA" or "the Act"), because their "implied certification" theory fails under *Universal*

[1] Relator has also raised a genuine issue for trial that the United States did not receive any goods or services in return for the $10,000 it paid on a claim for a "financial contribution" to a "victory party."

Health Services v. United States ex rel. Escobar, 579 U.S. ---, 2016 WL 3317565, slip op., No. 15-7 (June 16, 2016) ("*Escobar*"). In fact, the Supreme Court's decision in *Escobar*, which came down after defendants' motions were filed, affirmed the validity of plaintiffs' implied certification claims. Relator joins in the United States' opposition on this issue. Relator also notes that defendants' argument is a purely legal one and is directed solely at the falsity element. Defendants do not challenge the factual basis for plaintiffs' implied certification claims or any elements other than falsity.

C. Plaintiffs Have Raised a Genuine Issue as to Whether the Defendants Fraudulently Induced the 2000 Sponsorship Agreement.

Finally, Armstrong argues that summary judgment must be granted on plaintiffs' fraudulent inducement theory. ECF 514-1, Armstrong Memorandum at 35-40. The CSE Defendants join in Armstrong's argument and also assert that relator has failed to identify specific statements by the CSE Defendants made to fraudulently induce the United States Postal Service ("USPS") to enter into the 2000 Sponsorship Agreement. ECF 512, CSE Memorandum at 4. Relator joins in the United States' opposition on this point and also writes separately to address facts specific to the CSE Defendants. Relator contends that a genuine issue for trial exists as to whether Stapleton and CSE made or caused to be made false statements, or engaged in fraudulent conduct, to induce the USPS to enter into the 2000 Sponsorship Agreement, and whether Knaggs can be held liable on a veil piercing / alter ego theory.

As the United States' and relator's responses demonstrate, genuine issues remain for trial, and the current motions for summary judgment must be denied.

III. PROCEDURAL HISTORY

Relator filed this *qui tam* action on June 10, 2010, alleging violations of the False Claims Act in connection with the United States sponsorship of a professional cycling team. ECF 1.[2] The United States intervened against certain defendants, including

[2] Armstrong makes a variety of allegations regarding Mr. Landis' career and his motivation for filing the instant lawsuit, which are not supported by the evidence he cites. *See* ECF 514-1, Armstrong Memorandum at 25-26. Relator will refrain from detailing

defendant Lance Armstrong, the lead rider for the team, Johan Bruyneel, the *director sportif* for the team, and Tailwind Sports Corporation ("Tailwind"), the owner of the team. ECF 41. The United States also stated that it was "not intervening at this time" as to defendants Capital Sports and Entertainment Holdings, Inc. ("CSE"), William Stapleton and Barton Knaggs (collectively, the "CSE Defendants"), but reserved its right to intervene against them at a later date for good cause. *Id.* The United States filed its own complaint and relator filed a Second Amended Complaint ("SAC"). ECF 44, 42.

Remaining Parties: Relator's claims against defendants Thomas W. Weisel and Ross Investments were dismissed without prejudice following a motion to dismiss by those defendants. ECF 174. The Court also found that Tailwind absorbed all of defendant Tailwind Sports, LLC's liabilities and thus dismissed the claims against Tailwind Sports, LLC. *Id.* at 17. The clerk has entered default against intervened defendants Tailwind and Johan Bruyneel, ECF 503, and non-intervened defendant Montgomery Sports, Inc. ECF 101. Thus, the only defendants still actively litigating this matter at this time are those who now move for summary judgment, *i.e.*, defendant Armstrong (intervened) and the CSE Defendants (currently non-intervened).

Remaining Claims: In ruling on motions to dismiss, the Court held that the March 2009 amendments to the FCA pursuant to the Fraud Enforcement and Recovery Act, Pub. L. No. 111-21, 123 Stat. 1617 ("FERA") would apply to plaintiffs' "false statements" claims under 31 U.S.C. § 3729(a)(1)(B) but not to other claims under the Act. ECF 174 at 43-50. After initially surviving the motions to dismiss, *see id.* at 61-72, both plaintiffs' "reverse false claims" counts under section 3729(a)(7) were subsequently dismissed near the end of discovery after a motion for reconsideration by the CSE

---

those discrepancies here as the allegations regarding Mr. Landis are manifestly irrelevant to the instant motion. Indeed, Armstrong effectively concedes as much by including these "facts" only in his Memorandum but not in his Separate Statement of Undisputed Facts. *See id.* at 2 n.3. Relator objects to consideration of any of this evidence as irrelevant and prejudicial. Federal Rules of Evidence 402 & 403; *see also* L.Cv.R. 7(h) (only facts "identified by the moving party in its statement of material facts" are deemed admitted unless responded to). Relator reserves the right to challenge at trial any of Armstrong's factual claims made outside of the statement of facts.

Defendants. ECF 490 & 495. Thus, the False Claims Act claims that remain in the case are as follows: § 3729(a)(1) (false claims) § 3729(a)(1)(B) (false statements) (post-FERA amendment), and § 3729(a)(3) (conspiracy). (The United States also asserts common law claims for fraud, unjust enrichment, and breach of contract). ECF 44, Counts V-VII.

Statute of Limitations/Amounts at Issue: Also in response to motions to dismiss, the Court held that, under the Act's tolling provision, the statute of limitations applicable to the United States could extend back ten years, *i.e.*, to claims for payment made on or after June 10, 2000. ECF 174 at 30 ("The text's reference to 'the official of the United States' indicates that Congress intended Section 3731(b)(2) [the Act's tolling provision] to apply to actions brought by (or intervened in) by the United States.") (citations omitted). The Court also held, however, that the tolling provision does not apply to relator, thus limiting relator's non-intervened claims to those arising within six years before filing, *i.e.*, on or after June 10, 2004. *Id.*

The USPS paid out more than $40 million under the 1995 and 2000 Sponsorship Agreements. More than $32 million of that amount was paid in response to claims submitted on or after June 10, 2000. ECF 510, United States' Motion for Partial Summary Judgment as to All Defendants. Only four claims, however, totaling approximately $68,000, were submitted and paid on or after June 10, 2004. *Id.; see also* ECF 490 at 15-18 (holding that a reasonable jury could find that four claims totaling $68,000 were submitted under the Sponsorship Agreement after June 10, 2004 and paid by the United States). Accordingly, now that plaintiffs' reverse false claims counts have been dismissed, unless and until the United States intervenes for good cause against the CSE Defendants, the potential single damages under the FCA against them will be limited to that amount.[3] Defendant Armstrong remains potentially liable for single

[3] Relator moved for reconsideration of the Court's motion to dismiss ruling on tolling. ECF 497. While the Court declined to reconsider its ruling that tolling does not apply to claims by relators, the Court clarified in a June 8, 2016 Memorandum Opinion that its prior dismissal order did not preclude the United States from intervening against

damages under the FCA in the full amount of the $32 million paid within the ten-year statute.

IV. STATEMENT OF FACTS

Relator incorporates by reference the United States' Opposition, including the facts set forth in the United States Statement of Facts filed in opposition to Armstrong's motion for summary judgment. Relator also summarizes below certain of those facts and additional facts of particular relevance to the arguments herein, which should be viewed in the light most favorable to relator as the non-moving party. *Reeves v. Sanderson Plumbing, Inc.*, 530 U.S. 133, 150 (2000)

A. USPS Team and Sponsorship Agreements

"In 1995 and again in 2000, USPS [the United States Postal Service] agreed to sponsor the professional cycling team prominently linked with Lance Armstrong" (the "USPS Team"). *See* ECF 490, Memorandum Opinion at 2; *see also* Relator's Statement of Genuine Issues Responding to the CSE Defendants' Statement of Purported Undisputed Material Facts in Support of Motion for Summary Judgment and Identifying Additional Material Facts as to Which a Genuine Issue Remains for Trial ("Relator's Response to CSE SUF" and "Relator's SMF"), Relator's SMF at ¶¶ 1, 3, 5. The 1995 Agreement was entered into on October 1, 1995 and continued in effect until 2000. Relator's SMF at ¶ 3. On or about December 26, 2000, the USPS and DFP Cycling (a predecessor of Tailwind Sports Corporation) entered into the 2000 Sponsorship Agreement. ECF 490, Memorandum Opinion at 2; Relator's SMF at ¶ 5; *see also* Relator's Response to CSE SUF at ¶ 6. [4]

---

the CSE Defendants for good cause. ECF 524 at 7. If the United States were to intervene in the case for good cause, the potential damages figure would thus increase as the result of tolling applying to the claims against the CSE Defendants.

[4] The Court has previously held that relator has raised a genuine issue of fact as to whether the Sponsorship Agreement continued in effect until as late as March 2009. ECF 490, Memorandum Opinion at 13-15.

B. The 1995 and 2000 Sponsorship Agreements Prohibited Doping, Which Was a Total Breach of the Agreements.

1. The Sponsorship Agreements Prohibited Doping.

Under the terms of the 1995 Sponsorship Agreement,

> The performance of the obligations of the parties under this Agreement shall at all times and in all events be subject to compliance with all applicable rules of the *Union Cycliste Internationale* [UCI], the *Federation Internationale du Cyclisme Professional*; the United States Professional Cycling Federation, Inc., the International Olympic Committee [IOC], the United States Olympic Committee, the International Amateur Cycling Federation [IACF], the United States Cycling Federation and all other governing organizations.

1995 Sponsorship Agreement at ¶ 13. *See* Relator's SMF at ¶ 3 (incorporating copy of Agreement); *see also* ECF 174 at 3 (discussing 1995 Agreement). At all times relevant to the plaintiffs' claims, the rules of the UCI and the IOC prohibited the use of certain performance enhancing drugs and prohibited other practices known to enhance rider performance. Relator's SMF at ¶ 17.

This same provision prohibiting doping was included in the 2000 Sponsorship Agreement, which also included new provisions which the Court has previously summarized as follows:

> In the contract, Tailwind's predecessor represented to USPS that "each rider on the Team has a moral[] turpitude and drug clause that allows the Company to suspend or terminate the rider" for reasons such as failure to abide by the rules of international cycling organizations, "failure to pass drug or medical tests," or "inappropriate drug conduct prejudicial to the Team, or the Postal Service, which is in violation of the Team rules or commonly accepted standards of morality." *Id.* at 5. The "Company agree[d] to take appropriate action within thirty (30) days" in the event of such behavior. *Id.* The Sponsorship Agreement . . . authorize[d] USPS to "immediately terminate" the contract, and recognized its right to "exercise any . . . right or remedy available to it under law or in equity," upon the occurrence of a specified Event of Default. *Id.* at 4. Two such events were Tailwind's "fail[ure] to take immediate action . . . in a case of a rider or Team offense related to a morals or drug clause violation," and "negative publicity associated with an individual rider or team support personnel, . . . due to misconduct such as but not limited to, failed drug or medical tests, alleged possession, use or sale of banned substances, or a conviction of a crime." *Id.*

ECF 490 at 3. *See also* ECF 174 at 3-5; Relator's SMF at ¶ 5 (incorporating copy of 2000 Sponsorship Agreement); United States' Opposition.

In addition to these contractual provisions, as detailed below in the Argument section, applicable laws and regulations would have prohibited the USPS from knowingly entering into or continuing a contractual relationship with a doping team.

2. Doping Was a "Total Breach" of the Sponsorship Agreements.

It is undisputed that the USPS Team was involved in a doping scheme of historic proportion. *See generally* United States' Opposition; *see also* Relator's SMF at ¶ 19 (citing Armstrong admissions of plaintiffs' allegations). In response to defendants' motions to dismiss, the Court has already concluded that, if proven, such doping would be a "total breach" of the Sponsorship Agreements. Specifically, the Court held, *inter alia*, that

- "Doping by the cycling team would therefore be a total breach of the contracts, not only because they expressly required compliance with anti-doping rules, but also because rather than being associated with a team that is genuinely fast, the Postal Service's reputation and goodwill are seriously damaged by an association with a team that is faster because it cheats. Indeed, given the public relations goals of the sponsorship, it is manifest that compliance with anti-doping regulations was an [sic] core term of the contracts, because the negative publicity associated with doping defeats the essential purpose of the venture (from the sponsor's perspective)." ECF 174 at 66.

- "The only way the cycling team could provide the USPS with televised coverage of its iconic logo on the team jerseys -- and thereby provide the promotion contemplated under the agreement -- was to comply with the governing organizations' rules concerning doping. Doping would lead to suspensions or bans for team members and/or the entire team, and a team that cannot race cannot generate positive publicity for its sponsor." *Id.* at 67.

- "In sum, the alleged rider doping would have been a total breach of the 1995 agreement, and the same clearly holds true for the 2000 Agreement. As such, the Postal Service clearly could have sought restitution -- repayment of the sponsorship fees -- as a remedy." *Id.* at 68.

In a recent ruling, the Court confirmed that it "does not question Judge Wilkins's holding that the doping alleged by Relator would have constituted a 'total breach' of the Sponsorship Agreement . . . ." ECF 490, Memorandum Opinion, at 12 n. 7.

3. Had it known of the Team's Doping, the USPS Would Not Have Proceeded with or Made Payments Under the 2000 Sponsorship Agreement.

Consistent with the terms of the Sponsorship Agreements, applicable regulations and law, as well as the Court's repeated holdings that doping would be a total breach of the agreements, numerous USPS personnel have testified that they would not have proceeded with or made payments under the 2000 Sponsorship Agreement had they known that Armstrong and the others were using performance enhancing drugs. *See* United States' Opposition; *see also* Relator's SMF at ¶ 20 (citing several examples).

C. Defendant Armstrong Denied Doping, but He and Other Team Members Doped Extensively While Riding for the USPS Team.

Armstrong joined the USPS Team in 1998 and was its lead rider from 1999 through 2004. Relator's SMF at ¶ 1. During the time he was riding for the USPS Team and later, defendant Armstrong vehemently denied that he was doping. *See* United States' Opposition; *see also* Relator's SMF at ¶¶ 18, 68-69. Defendant Armstrong now admits that he and other USPS Team members used performing enhancing substances and engaged in blood doping throughout this period. *See* United States' Opposition; *see also* Relator's SMF at ¶ 19. One of the doping products defendant Armstrong admitted to using throughout his tenure on the team was testosterone. Relator's SMF at ¶ 19.

D. Armstrong's Relationship with the CSE Defendants

The CSE Defendants acted as Armstrong's agents and business managers for many years. Defendant Barton Knaggs has known Armstrong since 1993. Relator's SMF at ¶ 6. In 1995, Armstrong needed help finding an agent, and Knaggs introduced him to defendant William Stapleton. Relator's SMF at ¶ 7. Stapleton acted as Armstrong's agent from 1995 through 2013. Relator's SMF at ¶ 8.

Stapleton started defendant CSE in 1998 under the name Capital Sports Ventures ("CSV") and ran it under that name until 2001 when it was renamed Capital Sports and Entertainment. Relator's SMF at ¶ 9. The company was in the business of "manag[ing] athletes" or "sports agency" and "marketing and consulting." *Id.* From 1998 on, Stapleton operated as Armstrong's agent and business manager through CSV/CSE. Relator's SMF at ¶ 10.[5] At the time, Armstrong was CSV's only client, and Stapleton was CSV's only employee. *Id.*

In or around 2001, Knaggs began working with Stapleton at CSV. Relator's SMF at ¶ 11. At the time Knaggs joined the company, representing Lance Armstrong was still basically its only business. *Id.* Although CSE expanded into other lines of business over the years, representing Armstrong continued to account for a major portion of the company's revenue. *Id.* In 2004, Knaggs began acting as Mr. Armstrong's business manager as well. *Id.*

E. Stapleton and CSE's Involvement in the 2000 Sponsorship Agreement

1. Stapleton Knew of Armstrong's and the Team's Doping Prior to Execution of the 2000 Sponsorship Agreement.

Relator has previously presented, and hereby incorporates into this response, extensive evidence that defendants Stapleton and Knaggs, and therefore also defendant CSE, knew of Armstrong's and the team's doping. Relator's SMF at ¶ 21. Of particular relevance to the instant motion, Stapleton knew of Armstrong's doping prior to the USPS entering into the 2000 Sponsorship Agreement in December 2000.

[5] Knaggs stated in a declaration submitted to the Court in support of CSE's first motion for summary judgment that "CSE acted as Lance Armstrong's agent beginning in approximately 2001," when Knaggs joined the company. ECF 311-14, Decl. of Bart Knaggs at ¶ 3; *see also* ECF 490, Memorandum Opinion at 4. But Stapleton has testified that CSE's corporate predecessor Capital Sports Ventures ("CSV") contracted with Armstrong starting in 1998, that from 1998 forward Armstrong "had his agreements with CSV or CSE," and that all agreements with Armstrong in 1998 and after "were between a corporate entity for whom I was an employee and Lance." Relator's SMF at ¶ 10.

[redacted]

2. Stapleton Also Knew That The USPS Was Considering The Sponsorship Agreement, That Allegations of Doping Had Arisen, And That Sponsors Will Not Sponsor Doping Athletes.

During the latter part of 2000, Stapleton was aware that Armstrong's cycling team was in the process of negotiating a sponsorship agreement with the United States Postal Service. Indeed, Armstrong stated in his book *Every Second Counts* that Stapleton was

involved in negotiating the deal. Relator's Response to CSE SUF 7. As detailed below, Stapleton had also recently negotiated a lucrative rider agreement with Tailwind on Armstrong's behalf, but the Agreement (and Stapleton's agency fee) was contingent on finalization of the sponsorship agreement with the USPS. When doping allegations arose, Stapleton knew that the sponsorship agreement would not go through if the truth about Armstrong's doping became known.

Specifically, on or about October 10, 2000, Armstrong entered into a letter agreement with defendant Tailwind (then Disson, Furst & Partners) regarding his services as a rider on Tailwind's cycling team. Relator's SMF at ¶ 27. [redacted]

The letter agreement, however, specifically provided that it was to become effective only "upon the execution of the new sponsorship agreement between DF&P [now Tailwind] and the United States Postal Service." Relator's SMF at ¶ 28. After Armstrong entered into the rider agreement but before the USPS had signed off on the sponsorship agreement, there were "reports that French authorities had begun a preliminary investigation into allegations that the USPS cycling team used performance enhancing drugs in connection with the 2000 Tour de France." Relator's SMF at ¶ 30. Specifically, in or around late October or early November 2000, there were unconfirmed

reports of an investigation, and Armstrong began issuing denials and instructing Tailwind to do the same. Relator's SMF at ¶ 31; *see also* United States' Opposition. In or around Thanksgiving Day of 2000, Armstrong was informed that he was in fact under criminal investigation by French authorities, and he immediately called Stapleton to let him know. Relator's SMF at ¶ 32. As an experienced sports agent, Stapleton knew that sponsors did not want to hire or pay for doping athletes. Relator's SMF at ¶ 33.

3. Stapleton Made and Helped Armstrong Make False Statements Denying Doping to Induce the USPS to Enter Into the Sponsorship Agreement.

In his capacity as Armstrong's agent, one of the things Stapleton did was draft public statements for Armstrong. Relator's SMF at ¶ 34. Stapleton (or CSE) would also make public statements on Armstrong's behalf, with Armstrong's approval. Relator's SMF at ¶ 35. With respect to statements denying doping, Stapleton drafted statements for Lance, and CSE also made statements denying doping. Relator's SMF at ¶ 35. Stapleton testified that any statement he would have made denying Armstrong's doping "would have been to advocate for Lance and to defend him." *Id.*

[redacted] As Armstrong recalled, after news of the French investigation surfaced, sponsors were "running scared" and Stapleton had to reassure sponsors that Armstrong was not doping:

> Meanwhile, the investigation threatened to seriously mess with my reputation. Bill Stapleton was finding it difficult to conduct business. Coca-Cola was running scared of me, and so were other sponsors. Bill finally said to them, "Look, he doesn't take drugs, okay? I will stake my entire career on it." We wrote in anti-drug out-clauses in our contracts: if I tested positive, I'd give the money back. Bill had also begun trying to negotiate a new four-year deal with the U.S. Postal Service, the contract that was my chief

> income. But now Postal was wary of re-signing the entire team, and even briefly considered not renewing its team sponsorship. All because of a French fishing expedition.

Relator's Response to CSE SUF at ¶ 7.

During the time period after Armstrong entered into his rider agreement with Tailwind which was contingent on execution of the USPS sponsorship, and before the USPS executed the 2000 Sponsorship agreement, Armstrong and Stapleton made false statements publicly and to the USPS denying doping, including the following:

- On or about November 9, 2000, in statements published in the Austin Statesman regarding the French doping investigation relating to the USPS Team, defendant Armstrong stated, "We are absolutely innocent. Our team will stand on its morals and record of being an anti-doping team." Relator's SMF at ¶ 37.

- Prior to November 30, 2000, Armstrong repeatedly responded to press inquiries regarding the French investigation. Relator's SMF at ¶ 31.

- On or about November 30, 2000, Armstrong met with the USPS Vice President for Sales in Austin, Texas to discuss Armstrong's response to media inquiries regarding the doping allegations. During their conversation, they also discussed ways to clean up cycling. In response to the suggestion by the USPS Vice President for Sales that teams sponsored by large, reputable institutions such as the USPS might lead the way in such an effort by serving as examples of success achieved without doping, and by exerting pressure on other teams to be more open, Armstrong misled the USPS Vice President for Sales by suggesting, through his words and his conduct, that the USPS team was among the clean teams that might lead by example. Relator's SMF at ¶ 38.

- On or about December 3, 2000, in a statement to the press regarding news that urine samples would be tested as part of the French investigation, Stapleton said, "Lance has nothing to hide. His name is being dragged through the mud, and this is only going to get worse if we don't come up with some objective way to clear his name. I hope they will move quickly to test the samples." Relator's SMF at ¶ 39.[6]

---

[6] Relator's Interrogatory No. 2 asked CSE to "IDENTIFY ALL written or oral statements (to the United States, to any other DEFENDANT, to any sponsor of the USPS TEAM, to a member of the press, or in public, in any legal proceeding, or under oath) by CSE, William Stapleton or Barton Knaggs denying DOPING by Lance Armstrong or ANY other rider on the USPS TEAM or by the USPS TEAM generally." Scott Decl., Ex. R, Capital Sports and Entertainment Holding, Inc.'s Reponses to Relator's First Set of Interrogatories, at 10. CSE declined to identify all such statements, stating *inter alia* that "publicly available statements" were "equally available to relator." *Id.* at 12. Upon

- On or about December 3, 2000, in a statement to the press regarding news that urine samples would be tested as part of the French investigation, Stapleton said, "It's the best news in a long time. We are willing to roll the dice on testing because we know Lance is clean. He has nothing to hide." Relator's SMF at ¶ 40.

- On or about December 13, 2000, Armstrong said, in a statement on his website, "Here's the bottom line to everyone: I'll start by saying that we are completely innocent[.] We run a very clean and professional team that has been singled out due to our success[.] I can assure everyone we do everything in the highest moral standard." Relator's SMF at ¶ 41.

---

the filing of the CSE Defendants' instant motion for summary judgment, relator located the additional public denials by Stapleton from December 2000 listed herein. Scott Decl. at ¶ 22. Although CSE had identified certain published statements by Stapleton in its interrogatory response, it did not identify these December 2000 statements.

The foregoing statements reported in the media can be made admissible through witness testimony and are thus properly considered in support of relator's opposition to this motion for summary judgment. *See, e.g., Cook v. Babbitt*, 819 F. Supp. 1, 25-26 (D.D.C. 1993) ("[I]n judging whether a non-movant has produced enough to avoid summary judgment, the Court must consider the evidence they submitted -- even if it would be inadmissible at trial in the form submitted -- so long as it could be reduced to an admissible form for trial. This can be seen as a function of the Court's duty to look at the non-movant's case in its 'most favorable light.'") (quoting *Adickes v. Kress & Co.*, 398 U.S. 144, 157, 90 S.Ct. 1598 1608, 26 L.Ed.2d 142 (1970), internal citations omitted).

Moreover, now that relator has brought the statements to its attention, CSE has an obligation to supplement its interrogatory response to include these statements, which would also solve any potential hearsay issues. *See* Fed. R. Civ. P. 26(e) (1) ("A party . . . who has responded to an interrogatory . . . must supplement or correct its disclosure or response: (A) in a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing; or (B) as ordered by the court."); *United States v. Dish Network, LLC*, No. 09-3073, 2016 WL 29244 at *6 (C.D. Ill., January 4, 2016) ('[T]he duty to supplement extends beyond the close of discovery.") (collecting cases).

CSE is now on notice that its response is "incomplete." Although the existence of the articles has now been "made known" to relator through his own efforts, the interrogatory also serves the purpose of authenticating the statements as actually made by Stapleton and this fact has not yet been "made known." If the CSE Defendants fail to concede that Mr. Stapleton made the referenced comments, relator would therefore respectfully request that the Court order CSE to supplement its interrogatory response to include these statements.

As set forth in detail in the United States' opposition, during this time period Armstrong also caused USPS Team management to make false statements denying doping on his behalf.

4. The United States Entered into The 2000 Sponsorship Agreement In Reliance on Stapleton and Armstrong's False Statements.

Multiple USPS personnel involved with the 2000 Sponsorship Agreement followed press reports relating to doping by the USPS Team and relied on public denials in the media, and the misimpression created by the defendants' concealment of the truth, in deciding whether to enter into the Sponsorship Agreement and doing so. *See* United States Opposition; *see also* Relator's SMF at ¶¶ 42-43. Indeed, even Armstrong admits that "[i]n the fall of 2000, the USPS followed press reports of the French investigation into the use of PEDs by the team." ECF 514-1, Armstrong Memorandum at 14.

As noted above, the USPS finally signing on to the Sponsorship Agreement ensured that millions of dollars would flow to Armstrong under his rider agreement with Tailwind, a portion of which would be paid to CSE, and in turn to Stapleton.

F. The CSE Defendants' Submission of False Claims to USPS

No later than October 1, 2003, while the USPS Sponsorship was ongoing, CSE took over managing Tailwind. Relator's SMF at ¶ 12; ECF 490, Memorandum Opinion at 3-4. Both Stapleton and Knaggs became officers of Tailwind, and it was decided that CSE would become a shareholder with an 11.5% stake in the company. Relator's SMF at ¶ 13. As detailed in a written Service Agreement, CSE's responsibilities as manager of Tailwind included servicing the Team's sponsors and "assist[ing] Johan Bruyneel in complying in all material respects with all the regulations of all applicable cycling governing bodies . . . ." Relator's SMF at ¶ 14.

CSE's duties also included submitting claims for payment to the USPS on behalf of Tailwind. Relator's SMF at ¶ 15. USPS records indicate that the USPS paid Tailwind more than $7.7 million after October 1, 2003. Relator's SMF at ¶ 16. Although CSE now contends that some of these claims had been submitted by Tailwind prior to CSE

taking over, even CSE admits to submitting claims for $4.175 million to the USPS. *Id.* The claims that CSE admits submitting include all of the claims within the statute of limitations currently applicable to the CSE Defendants, *i.e.*, the four paid claims and two or more additional unpaid claims submitted after June 10, 2004. *Id.*; Relator's Response to CSE SUF 1.

G. Stapleton and Knaggs' Abuse of CSE's Corporate Form

1. Stapleton and Knaggs Dominated and Controlled CSE and Did Not Follow Corporate Formalities.

a. Stapleton and Knaggs Owned a Controlling Interest in CSE.

[redacted]

b. Stapleton and Knaggs Were Officers and Made All the Decisions.

[redacted]. On official corporate filings which called for CSE to list the "Name, title and mailing address of each officer and director," only Stapleton, or in later years Stapleton and Knaggs, were listed. Relator's SMF at ¶ 45. Stapleton was listed as President and a Director of CSE, and Knaggs was listed as Vice President and a Director. *Id.*

[redacted]

[redacted]

c. CSE did not hold board meetings or keep corporate minutes and other records.

The company did not hold formal board meetings. Relator's SMF at ¶ 48.

[redacted]

2. During the Pendency of This Action, the CSE Defendants Have Depleted All of CSE's Assets, Leaving It Insolvent.

[redacted]

[redacted]

[redacted]

V. ARGUMENT

A. Summary Judgment on the Issue of Damages Must Be Denied.

Armstrong and the CSE Defendants move for summary judgment on the issue of damages, arguing that the defendants' fraud caused no damage to the United States. ECF 514-1, Armstrong Memorandum, at 28-32; ECF 512, CSE Memorandum, at 3. Relator hereby joins in the United States' opposition on that issue and incorporates the same by reference herein. The United States' damages are the full amounts paid under the Sponsorship Agreements. Armstrong's alternative suggested measure of FCA damages, which is adopted by reference by the CSE Defendants, is contrary to established FCA precedent and would create a perverse incentive by rewarding defendants for successful concealment of their fraud. In addition, the CSE Defendants' suggestion that "reimbursements" should be treated differently than other claims under the Sponsorship Agreements is incorrect and has already been rejected by the Court.

[7] Notably, defendant Tailwind, of which Stapleton and Knaggs were officers and board members and CSE was an owner, is also defunct and has no assets. Relator's SMF at ¶ 68.

1. The United States' Damages Under the Sponsorship Agreements are the Amounts that Were Paid.

a. In FCA Cases, Courts Apply Different Measures of Damages Depending on the Facts of the Case.

The False Claims Act provides for recovery of "damages which the Government sustains because of the act of" the defendant. 31 U.S.C. § 3729(a). Courts generally "have not adopted one particular standard by which damages should be measured under the FCA." *United States ex rel. Harrison v. Westinghouse Savannah River Co.*, 352 F.3d 908, 922 (4th Cir.2003) ("*Harrison*"). "In calculating FCA damages, the fact-finder seeks to set an award that puts the Government in the same position it would have been if the defendant's claims had not been false." *United States v. Science Applications International Corp.*, 626 F.3d 1257, 1278 (D.C. Cir. 2010) ("*SAIC*") (citing *United States ex rel. Miller v. Bill Harbert Int'l Const., Inc.*, 608 F.3d 871, 904 (D.C. Cir. 2010); *Harrison*, 352 F.3d at 922-23). This approach comports with the overall purpose of the FCA's damages scheme, which is to make the United States "completely whole." *United States ex rel. Marcus v. Hess*, 317 U.S. 537, 551-52, 63 S.Ct. 379, 87 L.Ed. 443 (1943); *see also Harrison*, 352 F.3d at 923.

b. The Applicable Measure of Damages is the Difference between the Value of the Goods or Services Promised and the Value of What was Actually Delivered, *i.e.*, the Benefit-of-the-Bargain Rule.

This case involves violations of the False Claims Act arising from defendants submitting false claims, causing false claims to be submitted for payment under the Sponsorship Agreements, and conspiring to get false claims paid. The claims are alleged to be false, because, *inter alia*, the claims implicitly certified compliance with material provisions of the Sponsorship Agreements that prohibited doping, while defendants were aware that those requirements were being violated.

In *SAIC*, the Court of Appeals for the District of Columbia held that the so-called benefit-of-the-bargain rule applied to a false certification case under the False Claims Act. "In a case where the defendant agreed to provide goods or services to the government, the proper measure of damages is the difference between the value of the

goods or services actually provided by the contractor and the value the goods or services would have had to the government had they been delivered as promised." *SAIC*, 626 F.3d at 1278; *see also United States v. Bornstein*, 423 U.S. 303, 316 n.13, 96 S. Ct. 523, 46 L.Ed.2d 514 (1976) ("The Government's actual damages are equal to the difference between the market value of the [product] it received and retained and the market value that the [product] would have had if [it] had been of the specified quality."). Accordingly, the Court should hold that the benefit-of-the-bargain rule applies to the false claims in this case.

c. The Value of the Promised Services Is the Amount Paid by the United States Under the Sponsorship Agreements.

"Proper application of this benefit-of-the-bargain measure depends on the particular circumstances of the case." *SAIC*, 626 F.3d at 1278. Where it is not possible to determine the value of the goods or services promised, the value of what should have been delivered can be based on the amount paid by the United States. *Id.* at 1278-79 ("[I]f the value that conforming goods or services would have had is impossible to determine, then the fact-finder bases damages on the amount the government actually paid minus the value of the goods or services the government received or used.") (citing Joel M. Androphy, Federal False Claims Act & Qui Tam Litigation § 11.03[2] (2009)).

In the instant case, it is impossible to know with certainty what value the promised sponsorship of a cycling team would have had to the United States, for instead of providing a clean cycling team that competed fairly in compliance with the rules, Armstrong and the other team members doped and cheated to win. As there is no way of retroactively separating the "success" of Armstrong and the team from the fact that they were engaged in systematic doping, there is no way to know with certainty what the precise market value of the sponsorship would have been had the team complied with the rules. Accordingly, the best point of reference for determining the value of what should have been delivered to the Postal Service is the amount that was agreed upon and paid by

the Postal Service at the time on the understanding that it was receiving the service promised, *i.e.*, sponsorship of a clean team. *See SAIC*, 626 F.3d at 1278-79.

Relator respectfully refers the Court to the United States' Motion for Summary Judgment on the actual amounts paid by the United States under the Sponsorship Agreements within the applicable ten-year statute of limitations under the FCA. ECF 510. For purposes of summary judgment, the Court should hold that, on the facts of this case, the amounts paid by the United States represent "the value the goods or services would have had to the government had they been delivered as promised." *SAIC*, 626 F.3d at 1278.

d. The Value of the "Services" That Were Actually Provided Under the Sponsorship Agreements Is Zero.

Having established that the value of what was promised should be determined by the contract price paid by the Government, we now turn to the second half of the damages formula set out in *SAIC*, *i.e.*, "the value of the goods or services actually provided by the contractor." 626 F.3d at 1278. Under the benefit-of-the-bargain rule, the government can "recover the full value of payments made to the defendant . . . where the government proves that it received no value from the product delivered." *Id.* at 1279. Different "factual scenarios" may exist where the product or service delivered "so lacks any value as to make recovery of all monies paid by the government an appropriate remedy." *Harrison*, 352 F.3d at 923 n.17 (citing *United States v. TDC Mgmt. Corp.*, 288 F.3d 421, 428 (D.C. Cir. 2002)), *cited in SAIC*, 626 F.3d at 1279. As detailed below, in this factual scenario, the value of the services provided is zero because the defendants' fraud defeated the central purpose of the Sponsorship Agreements, because applicable law and regulations would have prohibited the Postal Service from sponsoring a doping team, and because the services were so morally tainted as to have no value.

i. As in *TDC II*, the Defendants' Fraud Defeated the Central Purpose of the Sponsorship Agreements.

In *United States v. TDC Management Corporation, Inc*., 288 F.3d 421 (D.C. Cir. 2002) ("*TDC II*"), the Court of Appeals upheld the district court's summary judgment ruling that the services delivered to the United States had no value under a factual scenario that is similar in key respects to the instant case. The *TDC* case centered on a Demonstration Bonding Program ("Program") of the Urban Mass Transit Authority ("UMTA") of the Department of Transportation. *Id.* at 422. "The Program was designed to assist minority enterprises in securing bonding from sureties when bidding on large transportation construction projects." *Id.* at 422-23. "By the terms of the Program, TDC was to serve as ombudsman between the parties, with no financial interest in Program operations," and "use its 'best efforts' to locate investors and sureties and obtain their tentative agreement to participate in the Program." *Id.* at 423.

On the first appeal in the case, the Court of Appeals affirmed the district court's holding that the required services were substantially provided by TDC. *United States v. TDC Mgmt. Corp.*, 24 F.3d 292, 295-296 (D.C. Cir. 1994) ("*TDC I*"). The Board of Contract Appeals had previously held that TDC "made substantial progress towards producing an operational Program," and the Court of Appeals agreed with the defendant that the United States was collaterally estopped from relitigating that issue in its False Claims Act action. *Id.* at 296. The Court also held, however, that these findings did not preclude the United States from establishing False Claims Act liability based on information that was omitted from TDC's progress reports. *Id.* Accordingly, the court reversed the district court's grant of summary judgment in favor of defendant. *Id.*

On remand, the district court entered summary judgment on liability in favor of the United States, based on further findings by the Board of Contract Appeals that TDC had omitted to disclose, *inter alia*, its failure to maintain its role as a financially disinterested ombudsman. *See TDC II*, 288 F.3d at 423. In addition, the district court entered summary judgment on the issue of damages, holding that damages were equal to what the government paid, less the amount "the government would have paid out had it

known of the information that TDC omitted from its monthly progress reports." *Id.* at 428. Applying this standard, the district court awarded as damages the full amount paid on the 18 false payment vouchers submitted by the defendants. *Id.* at 427. The Court of Appeals affirmed the grant of summary judgment in the full amount paid, observing that "[o]nce TDC deviated from its contracted role as impartial ombudsman by seeking a financial stake in joint ventures with private investors and by charging fees for the provision of material assistance to minority entrepreneurs, the district court then could properly find that the Program no longer had any value to the government." *Id.* at 428.

The Court of Appeals' holding in *TDC II* thus provides a clear example where a contractor provided substantial services to the United States but the value of those services was vitiated in its entirety by conduct on the part of the defendant that was fundamentally contrary to the parties' understanding of how they were to go about performing their services under the contract. *See also United States ex rel. Humane Soc'y v. Hallmark Meat Packing Co.*, No. EDCV 08-00221-VAP (Opx), 2013 WL 5753784 at * 16 (C.D. Cal. Apr. 30, 2013) (denying defendants motion for summary judgment on damages and ruling that meat inhumanely slaughtered in violation of contract terms would be given no value).

The same scenario is true in the instant case. In its ruling on the defendants' motions to dismiss in this case, this Court repeatedly emphasized that the alleged conduct of defendants, if proven, would constitute a total breach of the Sponsorship Agreements. ECF 174 at 66-67. This Court has thus already effectively determined, consistent with *TDC II*, that defendants' conduct, if proven, defeated the central purpose of the Sponsorship Agreements and thus resulted in no value being conferred on the Postal Service under the Sponsorship Agreements once the doping scheme began.

ii. Applicable Law and Regulations Would Have Prohibited the Postal Service from Entering into an Agreement for the "Services" of a Doping Team.

The facts in this case are even more compelling than those in *TDC II*, for while the Government in that case could have conceivably added or subtracted whatever lawful

duties and responsibilities it chose for the contractor, USPS personnel could never have entered into an agreement that called for the Postal Service to sponsor a cycling team that was understood to be doping and cheating to win. Relevant law, as well as regulations governing the Postal Service, would have prohibited USPS personnel from entering into such an agreement.

One of the doping products defendant Armstrong admitted to using throughout his tenure on the U.S. Postal Service team was testosterone. Relator's SMF at ¶ 19. The possession of testosterone without proper medical authorization has been a crime in the United States since prior to the time that the Sponsorship Agreements went into effect. *See* 18 U.S.C. § 844(a) (unlawful to possess a controlled substance unless obtained by a valid prescription); 21 U.S.C. § 802(6) (definition of controlled substance including "a drug or other substance" on Schedule III); 21 U.S.C. § 812(c) (schedules of controlled substances including "anabolic steroids" such as testosterone under Schedule III).

In addition, provisions of the USPS Employee and Labor Relations Manual (ELM) and the USPS Purchasing Manual, which are regulations of the United States,[8] would have prohibited the USPS from entering into the Sponsorship Agreements had the doping been known. According to the relevant provisions of the ELM in effect at the time the 2000 Sponsorship Agreement was entered into in December 2000, USPS employees were required to "avoid any action, whether or not specifically prohibited by

---

[8] During the relevant time period, the Purchasing Manual was incorporated by reference into the Code of Federal Regulations. *See, e.g.*, 39 C.F.R. 601.100 (2001) ("[T]he U.S. Postal Service hereby incorporates by reference its Procurement Manual (PM), Publication 41, a loseleaf [sic] publication."); USPS Purchasing Manual, Issue 1, January 31, 1997 Updated With Postal Bulletin Revisions Through November 15, 2001, at 1.2.1a ("Issuance. The PM is issued and maintained by the VP, P&M, and is incorporated by reference in 39 CFR 601."), available at http://about.usps.com/manuals/pm/chap1.pdf. *Cf.* 39 C.F.R. 601.101 & 601.102 (current versions) (noting that new regulations went into effect as of November 14, 2007 and that "All previous postal purchasing regulations, including the Postal Contracting Manual, Procurement Manual, the Purchasing Manual (Issues 1, 2 and 3), and procurement handbooks, circulars, and instructions, are revoked and are superseded by the regulations contained in this part."). *See also* 39 C.F.R. 211.2 (a)(2) ("The regulations of the Postal Service include . . . the Employee and Labor Relations Manual . . . .").

this Code, which might result in or create the appearance of: . . . Affecting adversely the confidence of the public in the integrity of the Postal Service." ELM 16, Code of Ethical Conduct, Section 661.3, Standards of Conduct (August 2000, effective through February 2001). The ELM further prohibited employees from engaging in "criminal, dishonest, notoriously disgraceful or immoral conduct, or other conduct prejudicial to the Postal Service . . . ." *Id.* at Section 661.53, Unacceptable Conduct. Lastly, the ELM stated that "All postal employees are expected to follow" the standards set forth in the Congressional Code of Ethics for Government Service which are quoted in the ELM and state, *inter alia*, that "Any person in government service should . . . Uphold the Constitution, laws and legal regulations of the United States and of all governments therein and never be a party to their evasion." *Id.* at Section 661.21. See Scott Decl, Ex. V (copy of relevant portions of ELM in effect at the time).

Similarly, the USPS Purchasing Manual in effect at the time stated that "Postal Service employees are held to the highest standard of conduct in the performance of their duties, and must conduct themselves so as to avoid even the appearance of any impropriety." *See* Purchasing Manual, Issue 1, Chapter 1, Authority Responsibility and Policy, Section 1.7.8, Standards of Conduct (January 1997, updated with Postal Bulletin revisions through November 15, 2001). With respect to suppliers to the Postal Service, the Purchasing Manual specifically enumerated "[v]iolation of a contract clause concerning the maintenance of a drug-free workplace" as a violation "so serious as to justify debarment action." *Id.* at Chapter 3, Sources, Section 3.7.1.e, Causes for Debarment. See Scott Decl., Ex. W (copy of applicable Purchasing Manual provisions in effect at the time).

In light of these governing rules and regulations, relevant USPS personnel would have been prohibited from even entering into an agreement that called for the USPS Team to dope and cheat in violation of UCI's and IOC's rules and federal criminal law. Indeed, numerous USPS personnel testified to the same effect, stating that they would not have proceeded with the 2000 Sponsorship Agreement had they known that Armstrong

and the others were using performance enhancing drugs. *See* United States' Opposition; Relator's SMF at ¶ 20.

Numerous cases have held that the Government's damages are the full amount of its payments in circumstances similar to this. In *United States ex rel. Drakeford v. Tuomey*, 792 F.3d 364, 386-87 (4th Cir. 2015), the Court of Appeals held that when the Government made payments to a defendant that "it was legally prohibited from paying [due to a violation of Stark laws], the government has suffered injury equivalent to the full amount of the payments." *See also id.* at 387 ("[T]he damage from the false statement came from the payment to an entity that was not entitled to any payment at all.").

In *U.S. ex rel. Liotine v. CDW Government, Inc.*, 2012 WL 2807040, at *11 (S.D. Ill. July 3, 2012), a case involving the delivery of goods from non-compliant countries in violation of the Trade Agreements Act (TAA), the district court concluded that the goods would have no value for purposes of the FCA damages calculation: "the correct measure of damages would be the entire amount that the government paid for the products" even though "the fact that the goods are purchased from a non-compliant country does not in itself mean that the goods are of any less quality or value."

Similarly, in *United States ex rel. Humane Soc'y v. Hallmark Meat Packing Co.*, No. EDCV 08-00221-VAP (Opx), 2013 WL 5753784 at *13 (C.D. Cal. Apr. 30, 2013) ("*Hallmark*, a defendant's motion for summary judgment on damages was denied where the government raised a triable issue of fact as to whether meat processing facility was ineligible to contract with the United States due to affiliation with a twice-convicted felon, and the Court specifically held that, if the allegation was proven, the measure of damages would be the "the total contract price the United States paid for the Facility's beef without any deductions."[9]

[9] *See also United States v. Mackby (Mackby II)*, 339 F.3d 1013, 1018-19 (9th Cir. 2003) (even though the defendant, who was not properly qualified, rendered the service to patients that was billed, the government's damage was the full amount billed); *United States ex rel. Longhi v. Lithium Power Technologies, Inc.*, 575 F.3d 458 (5th Cir. 2009)

As USPS personnel were prohibited from entering into an agreement that called for the cycling team to dope, and relevant USPS personnel have expressly confirmed that they would not have done so, the only reasonable inference is that the USPS, had it known the truth, could not have and would not have placed any value on a doping cycling team.

iii. The Conduct at Issue Was So Morally Tainted as to Render the Services Provided Worthless.

This case is also more compelling than *TDC II* because the conduct at issue here was so morally tainted as to render the services provided worthless. As the Court of Appeals noted in *SAIC*, there can be a variety of factual scenarios where the product or service delivered "so lacks any value as to make recovery of all monies paid by the government an appropriate remedy." *SAIC*, 626 F.3d at 1279. In *United States ex rel. Wall v. Circle C Construction, LLC*, 813 F.3d 616 (6th Cir. 2016) ("*Circle C*"), the Sixth Circuit Court of Appeals explained that one such scenario is where "some unalterable moral taint makes the goods worthless to the government." *Id.* at 618.

In *Circle C*, the Court applied the benefit-of-the-bargain theory of damages to a case involving a contractor which had paid "a handful of electricians about $9,900 less

---

(defendants who misrepresented their experience and ability when applying for government research grants held liable for full amount of the grants).

While the defendants may contend that these two cases are distinct in that the service provided in these cases was delivered to a third party rather than directly to the Government, this is a distinction without a difference. In *Hallmark* the Chief Judge of the Central District of California made short work of this meaningless distinction. 2013 WL 5753784 at *12 n.10. In response to the defendants' argument that their case involving tainted meat products delivered to the government was factually distinguishable from *Mackby II*, where clinical patients had received the services at issue, the court simply stated it "does not find this argument persuasive, nor relevant to the Court's determination of the appropriate damages calculation." *Id.; see also id.* at *12 (in addition to *Mackby II*, following cases also supported conclusion that, where defendant was ineligible to contract with the government, no setoff should be given for any value purportedly received: *United States ex rel. Feldman v. van Gorp*, 697 F.3d 78 (2nd Cir.2012); *United States v. Rogan*, 517 F.3d 449 (7th Cir. 2008); *United States ex rel. Antidiscrimination Ctr. of Metro N.Y., Inc. v. Westchester Cnty.*, 2009 WL 1108517 (S.D.N.Y. Apr. 24, 2009)).

than the Davis-Bacon wages" the contractor was supposed to pay in constructing dozens of warehouses for the Army. *Id.* at 617. Under the facts of the case before it, the Court held that the Government's damages were the amount underpaid to the electricians, not the entire amount paid for the electrical work in all of the warehouses. *Id.* at 618. In reaching this conclusion, however, the Court pointedly contrasted the case before it with other scenarios where goods or services would be so morally tainted as to not have any value: "Suppose that, contrary to the contract's terms, a contractor delivers uniforms manufactured by child laborers in Indonesia or silicon chips shipped from Iran. In those cases no award of money damages could remedy the contractor's breach." *Id.*

Similarly here, a reasonable jury could find that defendants' orchestration of the largest doping conspiracy in the history of sports created an unalterable moral taint to the "services" provided under the Sponsorship Agreement. Accordingly, should plaintiffs succeed in establishing liability, attributing zero value to the Sponsorship Agreements, which were so tainted from their inception, would be the appropriate result, irrespective of whatever benefits the defendants claimed were received by the Government.

2. Defendants' Calculation of Damages is Contrary to Applicable Law.

a. Defendants Improperly Look to the Value of Secondary "Benefits" Rather Than the Sponsorship Itself and Improperly Calculate The Value of a Clean Team Rather Than the Doping Team Actually Provided.

Defendants' suggested measure of the value they provided focuses on alleged benefits to the USPS arising after their delivery of a purportedly clean team, *i.e.*, a team that was doping but had not yet been discovered to be doping. ECF 514-1, Armstrong Memorandum at 32-34. Sponsorship of a clean team, however, is not what defendants provided. What defendants "actually provided" was sponsorship of a doping team. The benefit-of-the-bargain measure of damages is "the difference between the value of the goods or services *actually provided* by the contractor and the value the goods or services would have had to the government had they been delivered as promised." *SAIC*, 626 F.3d at 1278 (emphasis added).

Moreover, the fact-finder must measure the value of the goods or services provided, *i.e.*, sponsorship of a doping team, not any secondary "benefits" that might have flowed from such a sponsorship, like the "media impressions" or business leads on which Armstrong's analysis rests. *United States v. United Technologies. Corp.*, 782 F.3d 718, 731 (6th Cir. 2015) ("The only benchmark consistent with this benefit-of-the-bargain theory of damages is 'fair market value,' by which we meant (and still mean) 'what a willing buyer would pay in cash to a willing seller at the time.'") (quoting *United States v. 564.54 Acres of Land*, 441 U.S. 506, 511 (1979) (internal quotation marks omitted)).[10] Thus, the question the fact-finder must answer is: what would a willing buyer (*i.e.*, the United States) with full information have paid for sponsorship of a team that was known to be doping? The value of what was delivered is simply the value of sponsorship of a doping cycling team, not any alleged benefits that later arose from the defendants' deceit.

b. Perverse Incentives Would Result from Giving Defendants Credit for Alleged Benefits that Arose From Their Concealment of a Fraud.

The crux of defendants' argument is that they should somehow be able to avoid responsibility for their fraud because they were successful in maintaining their lie for an extended period of time and thus generated false notoriety for themselves and the Postal Service in the interim. But such an approach would plainly have negative policy implications, as it would incentivize those guilty of fraud to perpetuate a campaign of deceit after their initial transgression. Indeed, this would not only contravene public

[10] Cases discussing the concept of fair market value in other contexts also focus on the value of the item delivered and not any alleged benefits that might have flowed from that item later in time. *See, e.g., St. Luke's Hospital v. Sebelius*, 611 F.3d 900, 905 (D.C. Cir. 2010) (citing with approval the definition of fair market value articulated by the Second Circuit Court of Appeals and by Black's Law Dictionary, *i.e.*, the "price that the asset would bring by *bona fide* bargaining between well-informed buyers and sellers at the date of acquisition") (quoting 20 C.F.R. § 405.415(b)(2) (now 42 C.F.R. § 413.134(b)(2)) (emphasis added); *see also* Black's Law Dictionary 534 (5th ed. 1979) (same definition).

policy; it would also run contrary to the specific policy goals of the False Claims Act, which explicitly incentivizes wrong-doers to come forward to admit their wrongs as soon as the fraud is discovered and thereby pay less damages. 31 U.S.C. § 3729(a) (providing for double, rather than treble, damages where defendant reports fraud within 30 days of discovery and fully cooperates with Government).

When faced with similar scenarios, courts have specifically rejected the notion that defendants should get credit for any so-called "value" of the Government's use of defective goods or services during the period defendants concealed the fraud. In *United States ex rel. Compton v. Midwest Specialties*, 142 F.3d 296 (6th Cir. 1998) ("*Compton*"), a defendant provided defective brake shoe kits for government jeeps, which were installed and used by the government. The court, however, rejected the notion that defendant was entitled to any setoff for the value of the Government's use of the brake kits in operating jeeps prior to discovering they were defective. *Id.* at 304-05 & n.8. The court found that to give credit for the value of such use would create a "perverse incentive" because it would allow contractors to provide substandard or even dangerous parts with impunity, and meanwhile the Government would be "forced to bear the cost of any use it received from the substandard goods before their defects were discovered." *Id.*; *see also United States ex rel. Roby v. Boeing Co.*, 302 F.3d 637, 647-48 (6th Cir. 2002) ("*Roby*") (where Government had already used helicopter for 56 of 200 warranted flight hours prior to helicopter crashing due to defect in flight-critical gear, defendant was entitled to no setoff for value of Government's use of the defective helicopter prior to crash; instead, the sole issue was what was the value of the helicopter with a defective flight-critical part, *i.e.*, zero) (citing *Compton*).

Consistent with *Compton* and *Roby*, the Court should therefore limit its analysis to the value of the sponsorship of a doping team – not any supposed "benefits" that accrued while defendants concealed their doping -- and thereby avoid a rule of damages that incentives fraud.

c. The Difficulty Inherent in Ascertaining the Various Financial Impacts of Services Provided in Violation of Public Policy is Another Reason That Credit Should Not Be Given for the Value of The "Benefits" Identified by Defendants.

Another basis for not attributing value to the tainted alleged benefits claimed by the defendants is the simple difficulty of determining the value of such so-called benefits. In *Circle C*, the concurrence spoke to this point, opining that where calculating damages involves the difficult or impossible task of attempting to value violations of the public interest, such uncertainty should be borne by the defendant and damages should be the entire amount paid by the government, without giving any credit for any supposed value obtained from use of the product. 813 F.3d at 618-19 (Rogers, J., concurring) ("There are undoubtedly situations where (1) it is not practical to return government-purchased services or goods but (2) provision of the services or goods violated public interests in ways in which it is difficult or impossible to place a market value. In such cases the government may still claim that the proper measure of damages is the amounts wrongly paid, while continuing to use the goods or take advantage of the services."); *id.* at 609 ("[An] example would be the provision of a service, such as driving a truck without a required license (it is hard to undrive a truck). In such cases, the measure of damages may well be the amount that the government would have refused to pay if it had known in time, because there is no easily ascertainable alternative . . . .").

Indeed, it is well-established that where a defendant's conduct has created a situation where damages are difficult to value, such uncertainty should be borne by the defendant, not the injured plaintiff. *See, e.g.*, *Story Parchment Co. v. Paterson Parchment Paper Co. et al.*, 282 U.S. 555 (1931) ("[W]hatever ... uncertainty there may be in [a] mode of estimating damages, it is an uncertainty caused by the defendant's own wrong act; and justice and sound public policy alike require that he should bear the risk of the uncertainty thus produced."). Just as it is difficult to calculate the value of the hypothetical examples cited in *Circle C*, such as a computer chip that works but was purchased from Iran or a uniform that is sturdy but was sewn by child laborers, so also is it difficult to value purported boosts of employee morale due to wins that were actually

procured through cheating, business secured and/or lost as a result of doping by the USPS Team, or appearances by a celebrity whose entire persona was built on a lie. Under these circumstances, the Court should hold as a matter of law that damages are the amount paid by the Government, without affording credit for any alleged use or benefit obtained from the tainted services.

3. If the "Benefits" Asserted by Defendants Were to Be Considered, Then Continuing Negative Impacts on the United States Would Necessarily Also Have to Be Considered.

As the United States noted in its response, if the Court were to determine that the defendants should somehow be given credit for purported value allegedly received by the government from defendants' fraudulent scheme, then plaintiffs would necessarily be entitled and required to present evidence regarding the negative impacts on the United States over time immemorial that resulted from the fraudulent scheme being disclosed. Once again, however, for the reasons stated above, relator respectfully contends that such proof should not even be required, as the Court's analysis should focus on the value of the actual service delivered and not any false benefits that allegedly flowed therefrom.[11]

4. The CSE Defendants' Supplemental Arguments Regarding Damages Are Similarly Unpersuasive.

In addition to joining in Armstrong's arguments, the CSE Defendants argue that plaintiffs' damage theory is "particularly flawed" with respect to the four paid claims that fall within the statute of limitations applicable to the CSE Defendants. ECF 512, CSE Memorandum, at 3. Noting that the D.C. Circuit ruled in *SAIC* that False Claims Act damages must be based "on the amount that the government actually paid minus the value of goods or services the government received or used," CSE argues that these four claims were "largely for reimbursement of hospitality-related expenses" and that because

[11] In a February 17, 2016 telephonic hearing, the Court asked briefly about the possible application of securities law to the issue of damages, ECF 496 at 7, but that issue was not raised by defendants in their pending motions. According, relator has not addressed the issue here. If the Court were to be considering that area of law for guidance, relator would request an opportunity to brief that matter for the Court.

"relator has never contended that the amounts paid to CSE were inflated or otherwise improper or that the hospitality-related expenses were not incurred or received," relator therefore cannot establish any damages. *Id.*; *see also* CSE SUF 3; Relator's Response to CSE SUF 3.

As an initial matter, the Court has already rejected the CSE Defendants' contention that claims for "reimbursement" under the Sponsorship Agreement -- such as the four claims at issue with respect to the CSE Defendants -- are somehow different in kind from claims for lump-sum sponsorship fees. ECF 490, Memorandum Opinion, at 12 ("[T]he CSE Defendants have offered no persuasive reason to believe that if USPS had known that Tailwind breached the Agreement's anti-doping provisions, it would have been willing to make some payments specifically contemplated by the instrument, but not others."); *id.* at 15 ("[A]s the Court has already concluded, there is no meaningful distinction between contractual lump-sum payments and all other payments made under the Sponsorship Agreements.").

In addition, the argument misapprehends relator's claim for damages. Relator does not contend that defendants failed to provide or charged too much for hospitality at cycling races. Rather, relator's argument is that, had the USPS known that the team that bore its name was doping and cheating to win every race, it never would have sponsored the team in the first place, never would have paid the sponsorship fees, and never would have paid to set up chairs and tables and invite its potential clients to have some snacks and drinks while watching a cheating team race in USPS jerseys. And it certainly never would have paid $10,000 to sponsor a public party in Austin, Texas with a parade, fireworks, and the Steve Miller band to celebrate Armstrong's sixth fraudulent Tour de France "victory." *See* Relator's Response to CSE SUF 2.[12] The simple reality is the team's doping and cheating was a total breach of the Sponsorship Agreement and so antithetical to the entire purpose of the sponsorship that a jury could find that the

[12] In addition, the United States did not receive any goods or services in exchange for its $10,000 payment on this August 31, 2004 claim. *See id.*

Government received no value from the product delivered. As a result, plaintiffs' damages are the full amount of the payments.

B. Summary Judgment on Plaintiffs' Implied Certification Claim Must Be Denied.

Armstrong also argues that the plaintiffs cannot prove the "falsity" element under an implied certification theory because: 1) the entire theory of implied certification is not a viable theory of falsity under the False Claims Act as a matter of law, and 2) even if the theory is viable, it only applies where a contractual provision expressly states that it is a condition of payment. *See* ECF 514-1, Armstrong at 41-43. The CSE Defendants join in Armstrong's arguments and have not asserted any additional facts or argument specific to the CSE Defendants. ECF 512, CSE Memorandum at 3.

The Court has previously held that relator's complaint alleges falsity on an implied certification theory.[13] Defendants do not challenge relator's pleadings or the factual support for his implied certification claim; rather, their arguments are directed solely to the legal viability of the implied certification theory as the basis for falsity. Relator adopts by reference the arguments set forth by the United States on the issue of implied certification, including the United States' arguments relating to the Supreme Court's recent decision in *Universal Health Services v. United States ex rel. Escobar*, 579 U.S. ---, 2016 WL 3317565, slip op., No. 15-7 (June 16, 2016). ("*Escobar*"). The Supreme Court upheld the validity of the implied certification theory and rejected the idea that only "express" conditions of payment are actionable, and thus both of the arguments raised by Armstrong must fail.

---

[13] *See* ECF 174 at 55 (holding that plaintiffs' allegations "that the cycling team engaged in repeated and rampant doping activity that was prohibited by these governing bodies [mentioned in the Sponsorship Agreement] while submitting claims for payment to the Postal Service under those agreements" would be sufficient to establish that "there was a false certification of compliance with a material contract term" provided that plaintiffs also prove that defendants knowingly "withheld information about this noncompliance (doping)"); *see also id.* at 54 ("[T]he Court concludes the claims were false under the theory of implied certification . . . .").

Relator further notes that the facts in this case are even stronger than those before the Supreme Court in *Escobar*, for while the defendant in *Escobar* was only alleged to have told half-truths by not disclosing its non-compliance with regulatory requirements when submitting claims, the defendants in this case are alleged to have affirmatively lied, forcefully and repeatedly, regarding the material issue of the USPS Team's doping, both before and after the submission of claims. *See* United States' Opposition; Relator's SMF at ¶¶ 18, 37-41, 68-69; ECF 42, SAC at ¶¶ 121-130; ECF 44 U.S. Compl. at ¶¶ 62-68.

C. Summary Judgment on Plaintiffs' Fraudulent Inducement Claims Must Be Denied.

Armstrong's final argument challenges the sufficiency of plaintiffs' fraudulent inducement claims against him. Relator joins in the United States' response to Armstrong's arguments and incorporates those arguments and related facts herein.

The CSE Defendants join in Armstrong's argument and also rely on factual contentions specific to the fraudulent inducement claims against them. In particular, they contend that "the SAC does not identify any statement by the CSE Defendants that allegedly induced the USPS to enter into the Sponsorship Agreement, (CSE SOF ¶ 3), and Relator did not identify in discovery any statements by Mr. Knaggs related to drug use or the Tailwind cycling team, (Id. ¶ 4), nor any statements by Mr. Stapleton or CSE that pre-date the effective date of the Sponsorship Agreement, (*Id.* ¶¶ 5, 6). Moreover, the evidence already before the Court shows the CSE Defendants were not involved in the negotiation, drafting, or execution of the Sponsorship Agreement. (*Id.* ¶¶ 7, 8)." ECF 512, CSE Memorandum, at 4.

These contentions, however, provide no basis to grant summary judgment in favor of the CSE Defendants. Relator has presented facts which raise a genuine issue for trial as to whether Stapleton or CSE made or caused statements that fraudulently induced the USPS to enter into the 2000 Sponsorship Agreement, whether CSE may be held

vicariously liable for Stapleton's conduct, and whether Knaggs (and Stapleton) may be held liable on a veil piercing / alter ego theory.[14]

1. Relator Has Raised a Genuine Issue as to Whether CSE and Stapleton Fraudulently Induced the United States to Enter Into the 2000 Sponsorship Agreement.

a. Fraudulent Inducement Under the False Claims Act

The FCA imposes liability on any person who "knowingly presents, *or causes to be presented*, to an officer or employee of the United States Government . . . a false or fraudulent claim for payment or approval," 31 U.S.C. § 3729(a)(1) (pre-FERA) (emphasis added), as well as one who "knowingly makes, uses, *or causes to be made or used*, a false record or statement material to a false or fraudulent claim," 31 U.S.C. § 3729(a)(1)(B) (post-FERA) (emphasis added).[15] The statutory text makes clear that the defendant need not be the entity that actually submits the "false or fraudulent" claim. Rather, the False Claims Act "indicate[s] a purpose to reach any person who knowingly assisted in causing the government to pay claims which were grounded in fraud, without regard to whether that person had direct contractual relations with the government." *United States ex rel. Marcus v. Hess*, 317 U.S. 537, 544-45 (1943).

The False Claims Act also encompasses a "fraud-in-the-inducement" theory, which imposes liability "for each claim submitted to the Government under a contract which was procured by fraud, even in the absence of evidence that the claims were

---

[14] Relator focuses here on the fraudulent inducement theory because defendants have challenged the sufficiency of relator's evidence to support that theory. However, relator notes briefly that he also contends that CSE, Stapleton and Knaggs are directly liable under an implied certification theory for submitting or causing the submission of false claims or conspiring to submit false claims on behalf of Tailwind after June 10, 2004. Defendants' current motion does not challenge the factual basis for this potential source of liability for the CSE Defendants; their challenge to plaintiffs' implied certification theory is purely a legal one.

[15] As noted above, the Court has previously ruled that the pre-FERA version of the False Claims Act will apply to relator's claims, except for claims for false statements, which are governed by 31 U.S.C. 3729(a)(1)(B) (post-FERA amendment). ECF 174 at 43-50.

fraudulent in themselves." *U.S. ex rel. Bettis v. Odebrecht Contractors of Cal., Inc.*, 393 F.3d 1321, 1326 (D.C. Cir. 2005); *see also United States ex rel. Schwedt v. Planning Research Corp.*, 59 F.3d 196, 199 (D.C. Cir.1995) (noting that relator could have stated claim under fraudulent inducement theory by alleging that defendant "made an initial misrepresentation about its capability to perform the contract in order to induce the government to enter into the contract[,] and ... this original misrepresentation tainted every subsequent claim made in relation to the contract[.]"). Again, the defendant need not have a contract with the Government in order to be held liable. *See, e.g., United States ex rel. Marcus v. Hess*, 317 U.S. at 544-45; *U.S. ex rel. Westrick v. Second Chance Body Armor Inc.*, 128 F. Supp. 3d 1, 19 (D.D.C. 2015) ("Indeed, only one of the bidders engaged in the artificial bid inflation scheme in *Hess* ultimately received a contract from the government, but all of the "bid-rigging" companies were liable under the FCA."). Accordingly, the CSE Defendants' contention that Stapleton and Knaggs were "not involved" in the "negotiation, drafting, or execution" of the 2000 Sponsorship Agreement (CSE SUF 7) is simply irrelevant – in addition to being contradicted by Stapleton's own previous testimony and by Armstrong (*see* Relator's Response to CSE SUF 7) – for these facts are not necessary to prove fraudulent inducement.

b. Relator's Fraudulent Inducement Claim Need Not Be Based on False Statements by the CSE Defendants.

The CSE Defendants' argument that relator did not identify statements by Stapleton or Knaggs that allegedly induced the USPS to enter into the Sponsorship Agreement is also a non-starter. As an initial matter, a fraudulent inducement claim need not be based on a defendant's own false statements, but can also be based on causing another to make false statements or conspiring to get false claims paid. *See, e.g., Head v. Kane*, 798 F. Supp.2d 186, 198-99 (D.D.C. 2011) (FCA complaint stated fraudulent inducement claim where it was alleged that defendants knowingly "made or caused to be made fraudulent representations to the Government" regarding SBA certified 8(a) contractor which in fact was merely being used as a "pass through"); *id.* at 201-02 (same

allegations also stated claim of conspiracy under 3729(a)(3)). Moreover, a fraudulent inducement claim need not be based on fraudulent statements at all, but can instead be based on a fraudulent course of conduct. *See, e.g., U.S. ex rel. Bettis v. Odebrecht Contractors of Cal., Inc.*, 393 F.3d at 1326 ("[E]ach and every claim submitted under a contract, loan guarantee, or other agreement which was originally obtained by means of false statements *or other corrupt or fraudulent conduct*, or in violation of any statute or applicable regulation, constitutes a false claim.") (citing S. Rep. No. 99-345, at 9 (1986), reprinted in 1986 U.S.C.C.A.N. 5266, 5274) (emphasis added); *United States ex rel. Marcus v. Hess*, 317 U.S. at 544-45 (contracts obtained pursuant to bid rigging agreement among defendants were fraudulently induced). Here, relator has alleged that the CSE Defendants knew of the doping and knew that it was critical to the United States' decision to sponsor the Team, yet fraudulently perpetuated the understanding that the team was not doping and conspired to keep the truth from the Government. *See* Relator's Response to CSE SUF 3. Thus, relator has adequately alleged fraudulent inducement on a theory other than false statements, which the CSE Defendants do not challenge in their motion for summary judgment.

c. Relator Has Adequately Identified False Statements Made or Caused to be Made by the CSE Defendants.

To the extent relator also relies on fraudulent inducement by false statements, the CSE Defendants' contention that relator did not adequately identify such statements in his complaint or discovery responses is baseless. Relator's complaint adequately alleges his fraudulent inducement claim using examples of such statements (which are clearly identified as examples), and the CSE Defendants never moved to require relator to provide additional particularity. *See* Relator's Response to CSE SUF 3 (noting language that defendants' false statements "include, but are not limited to" those listed); ECF 178 at 59 n.3 (holding that CSE Defendants had waived their 9(b) arguments by failing to make them on motion to dismiss). In all events, as the United States explains in its

opposition, a False Claims Act plaintiff is not required to have listed all evidence of fraudulent inducement in its complaint.

Likewise, the CSE Defendants' discovery did not ask relator to identify statements that fraudulently induced the 2000 Sponsorship Agreement, but rather was directed exclusively to relator's reverse false claims theory. *See* Relator's Response to CSE SUFs 4 and 5.

Accordingly, for purposes of this motion for summary judgment, the statements identified in relator's and the United States' complaints, along with others identified by relator herein, are sufficient to raise a genuine issue as to whether the CSE Defendants may be held liable on a fraudulent inducement theory.

d. A Jury Could Find that Stapleton or CSE Made or Caused to be Made Statements to Fraudulently Induce the United States to Enter the 2000 Sponsorship Agreement.

[redacted]

Shortly after the letter agreement was entered, allegations of doping arose in a French investigation of the USPS Team. Relator's SMF at ¶¶ 30-31. Stapleton and Armstrong have admitted that they knew sponsors would not sponsor doping athletes and teams. *See* United States Opposition; Relator's SMF at ¶ 33. In fact, when news of the French investigation hit, many of Armstrong's sponsors were "running scared," requiring Stapleton to reassure sponsors that Armstrong was not doping. Relator's Response to CSE SUF 7.

Likewise, knowing that sponsors were jittery, and with the 2000 Sponsorship Agreement in the final stages of negotiation, Armstrong, CSE and Stapleton made false public denials of doping that induced the United States to execute the agreement. Armstrong has now admitted to his doping and copious evidence has been provided to the Court previously demonstrating that Stapleton was well aware of Armstrong's doping prior to the execution of the 2000 Sponsorship Agreement. Relator's SMF at ¶¶ 19, 21-25; *see also* United States' Opposition.

Both the United States and relator have alleged and presented evidence that defendant Armstrong made false statements in late 2000, including statements directly to the USPS, categorically denying that he was doping or at a minimum implying that he was not doping. *See* United States Opposition; Relator's SMF at ¶ 37, 38, 41. These statements were made during the period between October 10, 2000, when the letter agreement with Armstrong was signed, and December 26, 2000, when the Sponsorship was entered into. *Id.; see also* Relator's SMF at ¶¶ 5, 27. Defendants CSE and Stapleton were Armstrong's agents at the time, and Stapleton was in constant contact with Armstrong and generally wrote or approved Armstrong's public statements. Relator's SMF at ¶ 23, 34.

During this same time period, defendant Stapleton also directly made public and private statements denying that Armstrong was doping, which would have been approved by Armstrong. Relator's SMF at ¶ 35, 39, 40; Relator's Response to CSE SUF 7.

As set forth in the United States opposition, the United States was concerned when it heard about the French investigation. As even Armstrong admits, relevant USPS officials monitored press reports regarding the allegations prior to entering into the 2000 Sponsorship Agreement. USPS personnel relied on denials in the press in ultimately deciding to go forward with the Sponsorship Agreement. See United States' Opposition and USSOF; Relator's SMF at ¶¶ 20, 42-43. *U.S. ex rel. Westrick v. Second Chance Body Armor Inc.*, 128 F. Supp. 3d 1, 18 (D.D.C. 2015) ("If Toyobo provided invalid assurances to the market and put manipulated data into the marketplace, that could allow

the government to demonstrate that it was fraudulently induced to reimburse for vests that agencies selected in reliance on Toyobo's assertions"). Had Stapleton or Armstrong told the truth when making public statements regarding Armstrong's doping prior to the execution of the 2000 Sponsorship Agreement, the United States plainly would not have entered into the agreement. Relator's SMF at ¶ 20.

Based on the above facts, a jury could reasonably conclude that Stapleton and CSE, either directly through their own false statements and fraudulent conduct or by causing Armstrong's false statements or conspiring with him, fraudulently induced the USPS to enter into the Sponsorship Agreement. Accordingly, relator has raised a genuine issue for trial regarding the fraudulent inducement theory.

2. Relator Has Raised a Genuine Issue for Trial as to whether CSE is Vicariously Liable for Fraudulent Inducement by Stapleton.

In addition to being directly liable for its own false statements to induce the contract or for causing Armstrong to make false statements, defendant CSE could alternatively be held vicariously liable for false claims resulting from Stapleton's fraudulent inducement. In a False Claims Act case, "a principle [sic] is vicariously liable whenever its agents act within the scope of their employment or with apparent authority regardless of the employer's knowledge or culpability. This holding is consistent with the purpose of the FCA to broadly protect the property of the government." *U.S. ex rel. Shackelford v. American Management*, 484 F. Supp.2d 669, 676 (E.D. Mich. 2007) (surveying FCA precedents and joining in this majority view); *see also U.S. ex rel. McCready v. Columbia/HCA Healthcare Corp.*, 251 F.Supp.2d 114, 118 (D.D.C. 2003) (Lamberth, J.) ("[A] corporation is liable under the FCA for the fraudulent acts of its agents even if the corporation received no benefit from its fraud.") (citing *United States v. O'Connell*, 890 F.2d 563, 569 (1st Cir. 1989)).

[redacted]

[redacted] Accordingly, a reasonable jury could find that Stapleton was acting within the scope of his employment when, acting as Armstrong's agent, he made false representations regarding Armstrong's doping and helped Armstrong to make false representations as well. In addition, although *McCready* makes clear that no benefit to the corporation is necessary, in this case [redacted] Thus, relator clearly has raised a genuine issue for trial as to whether CSE could be held vicariously liable for fraudulent inducement based on the actions of its agent, Stapleton.

3. Relator Has Raised a Genuine Issue for Trial as to Whether Stapleton and Knaggs May Be Held Liable for the Debts of CSE

Finally, relator has raised a genuine issue of fact as to whether Stapleton and Knaggs could be held liable for fraudulent inducement on a veil-piercing theory. The Court set forth the legal standard for piercing the corporate veil in the D.C. Circuit in its decision on the defendants' motion to dismiss. *See* ECF 174 at 73-74 (citing *Labadie Coal Co. v. Black*, 672 F.2d 92, 96 (D.C. Cir. 1982)). Briefly, the standard involves a two-pronged inquiry in which the first prong looks to the "degree to which corporate formalities have been followed to maintain a separate corporate identity" and the second prong looks to "the basic issue of fairness under the facts." *Labadie*, 672 F.2d at 96; *see also id.* (two prong test: "1) is there such unity of interest and ownership that the separate

personalities of the corporation and the individual no longer exist? And 2) if the acts are treated as those of the corporation alone, will an inequitable result follow?")

a. CSE Failed to Observe Corporate Formalities

[redacted]

[redacted]

b. Recognizing CSE's Corporate Form Would Result in Inequity

[redacted]

[redacted]

VI. CONCLUSION

For the foregoing reasons, the Court should deny 1) Lance Armstrong's Motion for Summary Judgment or, In The Alternative, Partial Summary Judgment, and 2) Defendants Capital Sports & Entertainment Holdings, Inc., William J. Stapleton, and Barton B. Knaggs' Partial Joinder in Defendant Lance Armstrong's Motion for Summary Judgment or, In The Alternative, Partial Summary Judgment.

/

/

/

/

[16] Notably, the CSE Defendants' co-defendant and alleged co-conspirator Tailwind, of which Stapleton and Knaggs were also officers and directors and CSE was an owner, is also defunct and has no assets and thus also would not be able to satisfy any judgment in this case. Relator's SMF at ¶ 68.

Dated: July 11, 2016

Respectfully submitted,

/s/
Paul D. Scott
pdscott@lopds.com
California State Bar No. 145975
Admitted *Pro Hac Vice*

/s/
Lani Anne Remick
laremick@lopds.com
California State Bar No. 189889
U.S.D.C. No. PA0045
Jon L. Praed
U.S.D.C. No. 450764
D.C. Bar No. 51665
LAW OFFICES OF PAUL D. SCOTT, P.C.
Pier 9, Suite 100
San Francisco, California 94111
Tel: (415) 981-1212
Fax: (415) 981-1215

Attorneys for Relator Floyd Landis