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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF WASHINGTON**

10 UNITED STATES OF AMERICA ex
rel. UPPI, LLC,

11 Plaintiff-Relator,

12 v.

13 CARDINAL HEALTH, INC.;
CARDINAL HEALTH 414, LLC d/b/a
14 CARDINAL HEALTH NUCLEAR
PHARMACY SERVICES; CARDINAL
15 HEALTH 200, LLC; D’S VENTURES
LLC d/b/a LOGMET SOLUTIONS,
16 LLC; CARING HANDS HEALTH
EQUIPMENT & SUPPLIES, LLC;
17 OTHER UNNAMED SMALL
BUSINESS FRONT COMPANIES,
18 OBIE B. BACON, and DEMAURICE
SCOTT, and UNNAMED
19 INDIVIDUALS (DOES),

20 Defendants.

No. 2:17-CV-378-RMP

**AMENDED COMPLAINT
PURSUANT TO
31 U.S.C. § 3730**

DEMAND FOR JURY TRIAL

TABLE OF CONTENTS

1

2

3 AMENDED COMPLAINT 1

4 I. INTRODUCTION 1

5 II. LEGAL FRAMEWORK..... 5

6 A. Parties..... 5

7 B. Jurisdiction and Venue..... 9

8 C. Background..... 9

9 III. THE FRAUDULENT SCHEME 18

10 A. Summary 18

11 B. Defendants Presented False Claims to the Government,
Used False Statements Material to False Claims, and
Caused Such False Claims and Statements to Be
Presented and Used..... 22

12 C. Defendants’ Misrepresentations Were Material. 39

13 D. Defendants’ Fraud Induced the Government to Contract
with Them..... 48

14 E. Defendants Acted with Scienter..... 50

15 F. Defendants’ Conduct Injured the Government..... 56

16 IV. COUNTS OF COMPLAINT 57

17 V. JURY DEMAND..... 59

18

19

20

21

1 **AMENDED COMPLAINT**

2 COMES NOW, UPPI, LLC (“UPPI” or “Relator”), through the undersigned
3 attorneys, on behalf of the United States of America, and files this Amended
4 Complaint against Defendants Cardinal Health, Inc. and its related entities
5 (“Cardinal”), Caring Hands Health Equipment & Supplies LLC (“Caring Hands”),
6 D’s Ventures LLC d/b/a Logmet Solutions LLC (“Logmet”), Obie B. Bacon,
7 DeMaurice Scott, and unnamed individuals (“Does”) (collectively “Defendants”),
8 and alleges as follows:

9 **I. INTRODUCTION**

10 1. This is a *qui tam* action under the False Claims Act (“FCA”), 31
11 U.S.C. §§ 3729-33. The core allegation is that, since at least 2013, Defendants
12 conspired to fraudulently obtain lucrative Government contracts to supply
13 radiopharmaceutical products to hospitals and pharmacies, including those
14 operated by the Department of Veterans Affairs (“VA”).

15 2. Radiopharmaceutical products are radioactive materials used to treat
16 medical conditions, diagnose pathology, and visualize and measure physiological
17 functions. The Government buys these products through a competitive contracting
18 process. Although the ordinary rule is that contracts go to the most competitive
19 bidder, the Government gives preferential treatment to small businesses—and
20 even more preferential treatment to certain types of small businesses. For example,
21 woman-owned small businesses and minority-owned small businesses receive

1 more favorable treatment than small businesses generally. And for VA contracts
2 especially, small businesses owned by service-disabled veterans (called “Service
3 Disabled Veteran Owned Small Businesses” or “SDVOSBs” in contracting lingo)
4 receive the most preferential treatment of all.

5 3. These preferences take at least two forms. In some cases, contracts are
6 set aside so that *only* small businesses, or certain types of small businesses, can
7 bid on them. In other cases, the contract is not set aside or restricted, but the
8 preferred businesses still are more likely to win the award because contracting
9 officers want to meet targets for preferred contracting.

10 4. Contracting preferences exist for good reasons. The Government
11 understands that small businesses are the engine of the economy, and ensuring that
12 such businesses have opportunities to perform important work for the Government
13 allows them to develop their capacity. The more acute preferences for woman-
14 owned businesses, minority-owned businesses, and SDVOSBs also advance other
15 important public policy objectives, including promoting equality and diversity. In
16 the case of SDVOSBs, contracting preferences are awarded in recognition of
17 military service and to facilitate reintegration into civilian life. But preferences are
18 not handouts. Critically, in order to avail themselves of preferences for a particular
19 contract, small businesses must actually be able to perform the work required
20 under the contract.

21 5. The availability of small business preferences has created

1 opportunities for fraud. The least sophisticated version of this fraud occurs when
2 a business falsely represents that it is a preferred small business even though it is
3 not, and therefore wins a contract that it should not have won. The more
4 sophisticated version of the scheme is for a business that is not eligible for a
5 preference to find an eligible business, and form some kind of joint venture or
6 partnership that combines the small business's preferred status with the large
7 business's capacity to perform the work in order to obtain an unfair advantage in
8 Government contracting. Typically, the ineligible large business performs all or
9 nearly all the work under the contract, and receives nearly all of the money; the
10 preferred small business keeps a percentage in exchange for allowing the large
11 business to rent the small business's preferred status. This scheme—sometimes
12 called a “rent-a-vet” arrangement when it involves veterans—is functionally a
13 kickback scheme. The preferred small business receives remuneration not for the
14 fair value of its work, but for steering Government business to a large, ineligible
15 business that is attempting to avoid fair competition.

16 6. This case fits that template. Here, the SDVOSB Defendants—Caring
17 Hands, Logmet, and their owners—acted as front companies for Cardinal, a
18 massive, publicly traded company that was prohibited from using small-business
19 preferences. Cardinal and the SDVOSB Defendants conspired to take advantage
20 of the SDVOSB Defendants' preferred status to win radiopharmaceutical supply
21 contracts without competitive bidding. Thus, the SDVOSB Defendants used their

1 preferred status to bid on and obtain contracts to supply radiopharmaceutical
2 products to the Government, knowing all the while that Cardinal would do the vast
3 majority of the work and receive almost all the revenue under the contract. The
4 SDVOSB Defendants did this in collaboration with Cardinal, which encouraged
5 them to bid and helped them prepare their bids and pricing. After the contracts
6 were awarded, the SDVOSB Defendants did very little to perform them (typically
7 just invoicing); Cardinal actually supplied the products to the Government. The
8 Government paid the SDVOSB Defendants' invoices, but the SDVOSB
9 Defendants passed the majority of the money on to Cardinal, keeping only a
10 markup that they had charged to the Government above the prices Cardinal
11 charged to them. That markup was effectively a kickback for allowing Cardinal to
12 unfairly avoid competition for Government contracts.

13 7. Recently, the Government has cracked down on this sort of scheme,
14 pursuing civil and criminal charges against so-called "rent-a-vet" arrangements,
15 including subcontractor frauds like this one. In these cases, the Government has
16 emphasized that it takes fraud involving contracting preferences seriously. Indeed,
17 such fraud harms the Government in at least four ways. First, it undermines the
18 integrity of Government programs designed to help disabled veterans and
19 encourage small business development. Second, it prevents other small
20 businesses—which could actually have performed the work under the contracts—
21 from obtaining those contracts, undermining other Government preferences, too.

1 Third, it causes the Government to effectively contract with large businesses
2 without the benefit of a competitive bidding process—even though the entity doing
3 the work should only have been able to win contracts through intense competition
4 with all comers. And fourth, it causes the Government to pay money to small-
5 business front companies that it would not otherwise have paid. All of these harms
6 are present in this case.

7 8. As relevant here, the FCA creates civil liability for any person who
8 “knowingly presents, or causes to be presented, a false or fraudulent claim,” or
9 “knowingly makes, uses, or causes to be made or used, a false record or statement
10 material to a false or fraudulent claim,” or conspires to commit any of those
11 violations. 31 U.S.C. § 3729(a)(1)(A), (B), (C). It is well-established that the
12 statute creates liability when, as here, defendants defraud the Government during
13 the contracting process. In such cases, every claim for payment (invoice)
14 submitted under the contract is a false claim. This rule protects the public fisc and
15 the integrity of Government programs.

16 **II. LEGAL FRAMEWORK**

17 **A. Parties.**

18 9. Relator UPPI is a membership organization and limited liability
19 company, organized under the laws of the State of Delaware, and having, at all
20 times relevant to this action, its principal place of business in Suwanee, Georgia.
21 UPPI promotes the business interests and manages the growth of its approximately

1 sixty-seven members, which are individual, small business, and university-based
2 nuclear pharmacies engaged in the manufacturing, production, marketing, sales,
3 and distribution of nuclear pharmaceuticals. UPPI is an organization dedicated to
4 advancing the professionalism of the nuclear pharmacy industry.

5 10. UPPI has standing to bring this action pursuant to 31 U.S.C.
6 §3730(b)(1). Prior to becoming aware of any known public disclosure under
7 subsection (e)(4)(a) of 31 U.S.C. § 3730, Relator voluntarily disclosed to the
8 Government the information on which the allegations or transactions in this claim
9 are based; and Relator has knowledge that is independent of and materially adds
10 to any publicly disclosed allegations or transactions that may exist, and has
11 voluntarily provided the information to the Government before filing an action.

12 11. Defendant Cardinal Health 414, LLC d/b/a Cardinal Health Nuclear
13 Pharmacy Services, is a limited liability company organized under the laws of the
14 State of Delaware, with its principal place of business in Dublin, Ohio, and is a
15 wholly-owned subsidiary of Cardinal Health Inc. Cardinal Health 414
16 manufactures, dispenses and delivers radiopharmaceuticals.

17 12. Defendant Cardinal Health 200 is a limited liability company
18 organized under the laws of the State of Delaware, with its principal place of
19 business in Dublin, Ohio, and is a wholly-owned subsidiary of Cardinal Health,
20 Inc. that engages in the marketing of pharmaceutical preparations and medical
21 equipment, instruments, and supplies.

1 13. Defendant Cardinal Health, Inc., is a publicly traded company, which
2 also has its principal place of business in Dublin, Ohio. Cardinal Health, Inc.
3 provides healthcare products to pharmacies, hospitals, and ambulatory care sites,
4 including cold chain-refrigerated pharmaceutical tote packaging for pharmacy
5 deliveries, franchise pharmacies, nuclear pharmacy services, specialty
6 pharmaceutical distribution, and specialty pharmaceutical services. On its website,
7 Cardinal Health, Inc. represents itself as follows: “Headquartered in Dublin, Ohio,
8 Cardinal Health, Inc. (NYSE: CAH) is a global, integrated healthcare services and
9 products company, providing customized solutions for hospital systems,
10 pharmacies, ambulatory surgery centers, clinical laboratories and physician offices
11 worldwide;” as a “\$103 billion health care services company that improves the
12 cost-effectiveness of health care.” Its Chief Executive Officer is George S. Barrett.
13 Cardinal Health, Inc. may be served with process through its registered agent for
14 service of process, CT Corporation System, 1300 East Ninth Street, Cleveland,
15 Ohio 44114.

16 14. Cardinal Health, Inc. and its related entities named in this Amended
17 Complaint are referred to collectively as “Cardinal.”

18 15. Defendant Caring Hands Health Equipment & Supplies, LLC is a
19 limited liability company, organized under the laws of the State of South Carolina,
20 and having at all times relevant to this action, its principal place of business in
21 Ridgeland, South Carolina. Caring Hands represents on its website that it is

1 engaged in providing home healthcare services, supplying durable medical
2 equipment, and Government contracting. The company, through its owner and
3 CEO, defendant Obie B. Bacon, is certified as an SDVOSB, a Veteran Owned
4 Small Business, and a Minority-Owned Small Business by the Small Business
5 Administration (“SBA”). Caring Hands may be served with process through its
6 registered agent for service of process, Obie B. Bacon, 61 Riverwalk Boulevard,
7 Unit C, Ridgeland, South Carolina 29936.

8 16. Defendant Obie B. Bacon is the Chief Executive Officer and owner of
9 Caring Hands, together with his spouse, and formed the organization in 2009.

10 17. Defendant D’s Ventures, LLC d/b/a Logmet Solutions, LLC is a
11 limited liability company, organized under the laws of the State of Georgia, and
12 having at all times relevant to this action its principal place of business in Georgia.
13 Logmet represents on its website that it “provides one-stop single source
14 purchasing for all your medical and dental products and supplies at competitive
15 prices [offering] over 300,000 healthcare and dental manufacturer products.” The
16 company, through its owner and CEO, defendant DeMaurice Scott, is certified as
17 an SDVOSB, a Veteran Owned Small Business, and a Minority-Owned Small
18 Business by the SBA. Logmet may be served with process through its registered
19 agent for service of process, DeMaurice Scott, 301 Little Gem Ct, McDonough,
20 GA 30253. In 2018, the company’s address changed to 5240 Snapfinger Park
21 Drive Suite 115 Decatur, GA 30035-4054.

1 18. Defendant DeMaurice Scott is the Chief Executive Officer and owner
2 of Logmet.

3 19. Defendants Caring Hands and Logmet, and their individual owners,
4 are referred to herein as the SDVOSB Defendants.

5 20. Other unnamed individuals (Does) may include contracting officers or
6 other individuals who conspired with Defendants, or participated in the fraudulent
7 scheme set forth in this Amended Complaint, in violation of the FCA.

8 **B. Jurisdiction and Venue.**

9 21. This Court has subject matter jurisdiction over the claims asserted
10 herein pursuant to the FCA and 28 U.S.C. § 1331.

11 22. Venue is proper in this judicial district pursuant to 31 U.S.C. § 3732(a)
12 because one or more Defendants may be found, resides, and/or transacts business
13 in this District, or because an act, proscribed by 31 U.S.C. § 3729, occurred in this
14 District.

15 **C. Background.**

16 **1. The False Claims Act**

17 23. The FCA provides that “any person who (A) knowingly presents, or
18 causes to be presented, a false or fraudulent claim for payment or approval; (B)
19 knowingly makes, uses, or causes to be made or used, a false record or statement
20 material to a false or fraudulent claim; (C) conspires to commit a violation of
21 subparagraph (A) [or] (B) . . . is liable to the United States Government for a civil

1 penalty . . . plus 3 times the amount of damages which the Government sustains
2 because of the act of that person.” 31 U.S.C. § 3729(a)(1)(A).

3 24. The term “claim” means any request or demand, whether under a
4 contract or otherwise, for money or property and whether or not the United States
5 has title to the money or property, that—(i) is presented to an officer, employee,
6 or agent of the United States; or (ii) is made to a contractor, grantee, or other
7 recipient, if the money or property is to be spent or used on the Government’s
8 behalf or to advance a Government program or interest, and if the United States
9 Government—(I) provides or has provided any portion of the money or property
10 requested or demanded; or (II) will reimburse such contractor, grantee, or other
11 recipient for any portion of the money or property which is requested or demanded.
12 31 U.S.C. § 3729(b)(2).

13 25. The term “material” means having a natural tendency to influence, or
14 be capable of influencing, the payment or receipt of money or property. 31 U.S.C.
15 § 3729(b)(4).

16 26. Here, the alleged violations are: (1) that the SDVOSB Defendants
17 presented false or fraudulent claims to the Government, and that Cardinal caused
18 the presentment of these claims; (2) that the SDVOSB Defendants made or used
19 false records or statements material to their false or fraudulent claims, and that
20 Cardinal caused this misconduct; and (3) that the SDVOSB Defendants and
21 Cardinal conspired together to commit these violations.

1 27. More specifically, this case involves both express and implied false
2 certifications, as well as the theory of fraudulent inducement, sometimes described
3 as promissory fraud, which arises when a defendant obtains a Government contract
4 or benefit by fraud. In that circumstance, every claim for payment under the
5 contract is a false or fraudulent claim.

6 **2. Laws Aimed at Helping Small Businesses and Veterans in**
7 **Government Contracting**

8 28. The federal Government, pursuant to mandates from Congress, seeks
9 to award at least 23 percent of all federal contracting dollars to small businesses.
10 Of that 23 percent, at least 5 percent must be awarded to disadvantaged businesses,
11 and at least 3 percent must be awarded to SDVOSBs. *See* 15 U.S.C.
12 § 644(g)(1)(A). Specific agencies have their own requirements, which may be
13 higher. *See id.* § 644(g)(1)(B).

14 29. To help achieve these goals, certain contracts are set aside exclusively
15 for preferred businesses. For veterans contracting with the VA specifically,
16 Congress in 2006 enacted a mandate known as the “Rule of Two,” which provides
17 that outside of limited exceptions, the VA shall award contracts to veteran-owned
18 small businesses and SDVOSBs if the contracting officer reasonably expects that
19 at least two of these businesses will bid on the contract and that the award can be
20 made at a fair and reasonable price that offers best value to the United States. *See*
21 38 U.S.C. § 8127(d). The Supreme Court has clarified that the Rule of Two is

1 mandatory, even if the VA has already met its contracting goals. *See Kingdomware*
2 *Techs., Inc. v. United States*, 136 S. Ct. 1969, 1976 (2016). Thus, if two SDVOSBs
3 are able to bid on a contract with the VA, the VA is required to restrict competition
4 to SDVOSBs only.

5 30. There are two other situations in which contracts can be restricted to
6 SDVOSBs. First, set-asides can be used for contracts awarded pursuant to
7 simplified acquisition procedures, which apply to low-value contracts. When the
8 contract value is lower than a threshold amount (previously \$150,000, recently
9 changed to \$250,000), the contract can be, and typically is, set aside for small
10 businesses. *See* 38 U.S.C. § 8127(b).

11 31. Second, if only one SDVOSB is able to bid, contracting officers can
12 offer the contract on a “sole source” basis if certain other requirements are met.
13 This applies to contracts with a value above the simplified acquisition threshold,
14 but less than \$5 million, if the contractor is “determined to be a responsible source
15 with respect to performance of such contract opportunity,” and “the contract award
16 can be made at a fair and reasonable price that offers best value to the United
17 States.” 38 U.S.C. § 8127(c).

18 32. As a practical matter, because various types of small and
19 disadvantaged businesses are entitled to preferences in contracting, federal
20 contracting officers tend to start the research process by attempting to determine
21 whether at least two of the *most* preferred contractors—*e.g.*, SDVOSBs—are

1 capable of bidding on a contract. If they are, then the contract is restricted to those
2 businesses. If not, then the contracting officer is likely to ask whether other
3 preferred businesses—*e.g.*, veteran-owned businesses, woman-owned businesses,
4 or minority-owned businesses—are capable of bidding on the contract. If so, then
5 the bidding may be restricted to those businesses under another set-aside program.
6 And if not, then the contracting officer might open the bidding up to all comers.
7 But even when bids are fully competitive, contracting officers are mindful of
8 Government-wide and agency-specific goals for awarding contracts to small
9 businesses, and so still tend to prefer those businesses over large businesses. The
10 upshot is that SDVOSBs enjoy a uniquely privileged position in contracting with
11 the VA. They can effectively jump in front of all other businesses to obtain
12 lucrative Government contracts based on the Government’s market research.

13 33. The requisite market research typically consists of federal contracting
14 officers reviewing previously awarded contracts to identify potential bidders, and
15 sometimes reaching out to contractors they know of (perhaps because those
16 contractors have bid on or been awarded similar contracts in the past, because the
17 contractors appear in a relevant database, or because the contracting officer met
18 those contractors at a trade expo) and asking whether the contractors can submit a
19 bid. At this point in the process, Government contracting officers typically take
20 contractors at their word about whether they can perform the contract obligations;
21 they do not look behind those statements. If this research process reveals that two

1 or more SDVOSBs are interested in submitting offers, the contract will be
2 restricted to SDVOSBs under the Rule of Two. If only one SDVOSB responds,
3 the contract may be set aside as a “sole source” award if it meets the other
4 requirements.

5 34. To ensure that preferences for SDVOSBs are not abused, the
6 Government imposes limitations on who counts as an SDVOSB, and on how
7 SDVOSBs perform their contracts.

8 35. An SDVOSB is a business owned and controlled by one or more
9 service-disabled veterans. The business must be at least 51% owned by a service-
10 disabled veteran, and the management and daily business operations must be
11 controlled by a service-disabled veteran (or in limited cases, by that individual’s
12 spouse). The business must also qualify as “small” as the SBA uses that term. *See*
13 13 C.F.R. § 125.11.

14 36. As a general rule, an SDVOSB that is awarded a set-aside contract of
15 a certain size must perform at least 50% of the work on that contract, and keep at
16 least 50% of the payments. Before June 30, 2016, the relevant regulation provided
17 that for a supply contract, the SDVOSB must perform work for at least 50% of the
18 cost of manufacturing the supplies, not including the cost of materials. As of June
19 30, 2016, the language of the relevant regulation changed slightly. For contracts
20 awarded after that date, the rule provides that the SDVOSB may not pay more than
21

1 50% of the amount paid to it by the Government to a subcontractor that is not
2 similarly situated, *i.e.*, not also an SDVOSB. *See* 13 C.F.R. § 125.6.

3 37. There are limited exceptions to the requirement that the SDVOSB
4 perform the work and receive the benefit under the contract. One, known as a non-
5 manufacturer rule, is that a non-manufacturing small business may source
6 products from other small businesses. Another is that the SBA may issue a waiver
7 permitting a small business to source products from a large business. But absent
8 such a waiver, an SDVOSB cannot simply buy products from a large business and
9 re-sell them to the Government at a markup.

10 **3. Regulations Regarding the Provision of Radiopharmaceuticals.**

11 38. Nuclear medicine refers to medicine (a pharmaceutical) that is
12 attached to a small quantity of radioactive material (a radioisotope). This
13 combination is referred to as a “radiopharmaceutical,” or “nuclear
14 pharmaceutical.”

15 39. Radiopharmaceuticals target specific organs or cellular receptors,
16 while external detectors capture the radiation emitted from the
17 radiopharmaceutical as it moves through the body to generate an image. Diagnosis
18 is based on the way the body is known to handle substances in the healthy state
19 versus a diseased state.

20 40. Radiopharmaceuticals are highly regulated by multiple federal, state,
21 and local agencies. That is because the materials involved are dangerous, because

1 the pharmaceuticals themselves are difficult to manufacture and handle, because
2 they typically must be delivered extremely quickly (often within hours of being
3 compounded) to the place where they will be used, and because the waste
4 generated from the production and use of these products is hazardous.

5 41. The Nuclear Regulatory Commission (“NRC”) has authority to license
6 and regulate the possession, use, and disposal of nuclear by-product materials,
7 including nuclear pharmaceuticals. The NRC licenses and regulates the use of
8 nuclear by-product materials directly in 21 states, and has transferred that authority
9 to state regulatory agencies in 29 states (“the Agreement States”). Thus, either the
10 NRC or an Agreement State agency regulates the production, distribution, use of,
11 and disposal of radiopharmaceuticals in a given locale, including by licensing
12 nuclear pharmacists.

13 42. The NRC acts on a specific regulatory scheme that governs the
14 issuance of licenses and administration of radiopharmaceuticals to ensure that any
15 person or entity that may manufacture, produce, acquire, receive, possess, prepare,
16 use or transfer byproduct material for medical use may only do so in accordance
17 with a specific license issued by the NRC or an Agreement State. 10 C.F.R. § 35.1,
18 *et seq.*

19 43. As a result, nuclear pharmacies and nuclear pharmacists who handle
20 radiopharmaceuticals must be highly specialized and meet specific and stringent
21 requirements.

1 44. Individual nuclear pharmacists must first be licensed by their state
2 boards of medicine and pharmacy before they can apply for authorization from the
3 NRC or from an Agreement State agency to produce, distribute or use nuclear
4 pharmaceuticals as a nuclear pharmacist.

5 45. To be licensed by the NRC or an Agreement State agency as a nuclear
6 pharmacist, a pharmacist must:

7 (a)(1) have graduated from an accredited pharmacy program; (2) hold
8 a current, active license to practice pharmacy; (3) have acquired at least
9 4000 hours of training/experience in nuclear pharmacy practice; and (4)
10 pass an examination in nuclear pharmacy; *or*

11 (b)(1)(i) have completed 700 hours in a structured education program
12 consisting of 200 hours of classroom and laboratory training in (A)
13 radiation physics and instrumentation; (B) radiation protection; (C)
14 mathematics pertaining to the use and measurement of radioactivity;
15 (D) chemistry of byproduct material for medical use; and (E) radiation
16 biology; and (ii) supervised practical experience in a nuclear pharmacy
involving (A) shipping, receiving and performing radiation surveys;
(B) using and performing checks for proper operation of instruments;
(C) calculating, assaying, and safely preparing dosages for patients; (D)
using administrative controls to avoid medical events in the
administration of byproduct material; and (E) using procedures to
prevent or minimize radioactive contamination; and (2) obtained
written attestation from a preceptor authorized nuclear pharmacist that
the requirements have been met.

17 10 C.F.R. § 35.55.

18 46. Similarly, to provide radiopharmaceuticals to Government agency
19 pharmacies like VA pharmacies, a distributor must be licensed, either by the NRC
20 and/or by the Agreement State, to produce, distribute, and use
21 radiopharmaceuticals for human administration. 10 C.F.R. § 35.55.

1 47. Radiopharmaceuticals are not only regulated by the NRC and
2 Agreement States, but also by the Food and Drug Administration (“FDA”), which
3 in 2011 established requirements in 21 C.F.R. Part 212 that require firms
4 manufacturing certain radiopharmaceuticals to do so in conformity with current
5 Good Manufacturing Practices, and with drug approval requirements.

6 48. These regulatory requirements matter in the bidding process. As set
7 forth in greater detail below, VA solicitations for radiopharmaceuticals clearly and
8 repeatedly mandated that contract awardees be licensed and have the capability to
9 properly distribute and otherwise handle these highly specialized and regulated
10 radiopharmaceutical products.

11 49. Moreover, bids on contracts to supply radiopharmaceuticals are
12 complex and technical, and require specialized knowledge of the relevant products
13 and regulations. A bidding contractor must ensure that it is able to provide the
14 correct drugs and isotopes, in correct dosages, within hours, to the location where
15 the drugs will be used. Doing so is essentially impossible without the relevant
16 training necessary to obtain a license in this field.

17 **III. THE FRAUDULENT SCHEME**

18 **A. Summary**

19 50. Defendants defrauded the United States by exploiting its preferential
20 system for contracting for radiopharmaceuticals. The SDVOSB Defendants were
21 incapable of actually providing the radiopharmaceuticals the Government needed.

1 They lacked the necessary facilities, licenses, and technical expertise to
2 manufacture or distribute these complex products. The SDVOSB Defendants
3 knew all this, and in fact never intended to perform the contracts. Nevertheless,
4 they falsely represented otherwise during the market research phase, the
5 solicitation phase, and the performance phase. The SDVOSB Defendants thus
6 obtained Government contracts to supply radiopharmaceuticals by fraud.

7 51. Cardinal caused the SDVOSB Defendants to make these
8 misrepresentations. As explained above, bids for radiopharmaceutical supply
9 contracts are complicated. The products are difficult to prepare and handle. And
10 the logistics are demanding because the Government required specific products to
11 be delivered to specific locations on very tight timeframes. Accordingly, the only
12 way the SDVOSB Defendants (who lacked all relevant expertise) could prepare
13 successful bids was by consulting with Cardinal to ensure that it could supply the
14 required products to the required locations. Moreover, the SDVOSB Defendants
15 had to consult with Cardinal about the pricing Cardinal would offer to the
16 SDVOSB Defendants to ensure that the prices the SDVOSB Defendants quoted to
17 the Government incorporated a sufficient markup for them to make a profit. It is a
18 reasonable inference that if Cardinal refused to supply the relevant products, or to
19 provide pricing, the SDVOSB Defendants simply could not bid. Cardinal's
20 support was therefore essential to preparing the SDVOSB Defendants' false or
21 fraudulent bids.

1 52. Once the Government awarded the contract to one of the SDVOSB
2 Defendants, Cardinal stepped in to actually provide the products, and to ultimately
3 receive the vast majority of the financial benefit from the agreement. The
4 SDVOSB Defendants merely sent the invoices, which falsely suggested that the
5 SDVOSB Defendants were performing the contracts. Under this arrangement,
6 Cardinal supplied radiopharmaceuticals to the Government; the SDVOSB
7 Defendants invoiced the Government for those products, charging more to the
8 Government than Cardinal charged to them (a markup); the Government paid the
9 SDVOSB Defendants, and the SDVOSB Defendants paid Cardinal the vast
10 majority of the money they received from the Government, keeping the markup as
11 a reward for acting as a pass-through. Thus, the SDVOSBs played no beneficial
12 role in the arrangement. Instead, they allowed Cardinal to circumvent competitive
13 bidding, and caused the Government to pay unnecessary markups on
14 radiopharmaceuticals.

15 53. The misrepresentations were material to the Government's contracting
16 and payment decisions. The Government's preferential contracting programs, and
17 the restrictions on them, suspend the ordinary competitive contracting process for
18 the benefit of bona fide small business contractors who can actually do the work
19 required by the contract. They are not vehicles for large businesses like Cardinal
20 to avoid competition or take more Government business. Indeed, they are intended
21 to prevent exactly that result.

1 54. As a result of Defendants' fraud, the Government awarded contracts
2 to the SDVOSB Defendants that it would not otherwise have awarded. Indeed,
3 were they being honest, the SDVOSB Defendants never could have bid on these
4 contracts at all. But they did, and as a result, received payments from the
5 Government that they did not earn. Cardinal benefitted because it gained the
6 opportunity to supply radiopharmaceuticals on contracts that otherwise would
7 have been awarded to bona fide small business contractors.

8 55. All of the Defendants acted with scienter. They understood the
9 contractual requirements, including the restrictions on set-asides and preferences,
10 but sought to win Government contracts unfairly. Thus, Defendants acted either
11 knowingly or at least recklessly. In the process, Defendants exploited Government
12 contracting officers who were either unaware of who was actually performing the
13 contract, unaware of the contractual requirements, unaware of the surrounding
14 legal rules, or knowingly or recklessly assisting Defendants in violation of those
15 requirements and rules.

16 56. Just as the fraud benefited Defendants, it harmed the Government. It
17 did so by undermining the integrity of contracting programs, preventing the
18 Government from awarding contracts to small businesses (including several UPPI
19 members) that could actually perform the contracts, and allowing Cardinal to
20 effectively win those contracts without competitive bidding. The fraud also caused
21

1 the Government to make payments to the SDVOSB Defendants that the
2 Government would not otherwise have made.

3 **B. Defendants Presented False Claims to the Government, Used False**
4 **Statements Material to False Claims, and Caused Such False Claims**
5 **and Statements to Be Presented and Used.**

6 57. As set forth in detail below, the SDVOSB Defendants responded to
7 Government market research inquiries and submitted bids on contracts to supply
8 radiopharmaceuticals to the Government. In the process, the SDVOSB Defendants
9 made false or misleading statements that induced the Government to set aside the
10 contracts and/or award them to the SDVOSB Defendants. They did this by
11 representing that they were capable of performing the contracts and concealing the
12 *de minimis* role they actually intended to play (really just sending invoices). The
13 SDVOSB Defendants also made false representations at the moment of
14 contracting, promising to abide by contractual requirements—including
15 subcontracting restrictions—that they had no intention of honoring.

16 58. From 2013 to the present, Caring Hands solicited and was awarded
17 contracts to provide radiopharmaceuticals at the following VA locations for at
18 least the following date ranges. Some relevant contract numbers are listed in the
19 footnotes:

- 20 • Durham, NC, Jan. 2014 – Dec. 2015¹;

21 ¹ VA246-14-D-0022 (indefinite delivery contract awarded Jan. 1, 2014);
VA246-14-J-0473 (delivery order awarded January 2, 2014); VA246-15-J-0044

- 1 • Columbia, SC, Sept. 2014 – Jan. 2020²;
- 2 • Miami, FL, Oct. 2014 – Jan. 2016³;
- 3 • Birmingham, AL, Apr. 2015 – Sept. 2016⁴;
- 4 • San Antonio, TX, Jan. 2017 – Present.⁵

5 59. These are in addition to the multi-year contract options applicable to
6 some contracts. Under these contracts, Caring Hands issued invoices to the
7 Government and the Government paid Caring Hands at least \$7.8 million from
8 2014 until the present.

9 60. These contracts were set aside for SDVOSBs, were sole source
10 awards, or were offered under simplified acquisition procedures. Accordingly, the
11

12 (delivery order awarded October 14, 2014). An indefinite delivery contract is a
13 contract vehicle that facilitates the ensuing delivery orders.

14 ² VA247-14-C-0365 (definitive contract awarded September 1, 2014);
36C247-19-P-1190 (purchase order awarded September 1, 2019).

15 ³ VA248-14-D-0216 (indefinite delivery contract awarded October 15, 2014);
VA248-15-J-0203 (delivery order awarded October 15, 2014);
16 VA248-15-D-0013 (indefinite delivery contract awarded November 10, 2014);
VA248-15-J-0210 (delivery order awarded November 10, 2014);
17 VA248-15-J-1468 (delivery order awarded January 7, 2015); VA248-15-J-1387
(delivery order awarded March 13, 2015); VA248-15-J-2352 (delivery order
18 awarded July 9, 2015).

19 ⁴ VA247-15-P-1634 (purchase order awarded April 16, 2015).

20 ⁵ VA257-17-D-0008 (indefinite delivery contract awarded January 6, 2017);
VA257-17-J-0143 (delivery order awarded January 6, 2017); 36C257-18-N-0188
(delivery order awarded November 1, 2017); 36C257-19-N-0143 (delivery order
21 awarded November 1, 2018); 36C257-20-N-0090 (delivery order awarded
November 1, 2019).

1 awards that were not subject to open competition, which limited the Government's
2 ability to receive multiple bids and get the best value or pricing for the
3 procurement. And restrictions on subcontracting applied.

4 61. The SBA did not issue a waiver permitting Caring Hands to procure
5 the products in question from a business like Cardinal, and so Caring Hands was
6 required to perform a majority of the work, and keep a majority of the benefit,
7 under each of these contracts.

8 62. The VA awarded Logmet radiopharmaceutical contracts or contract
9 modifications between 2016 and the present for a total contract award amount of
10 approximately \$1.6 million, for which Logmet has submitted invoices to the
11 Government and received payment. The contract numbers, cities of performance,
12 and dates of performance were:

- 13 • Denver, CO, Feb. 2016 – Present⁶;
- 14 • Albuquerque, NM, Jan. 2017 – Sept. 2017.⁷

15 These contract awards were set aside or sole source contract solicitations.
16
17

18 ⁶ VA259-16-D-0159 (indefinite delivery contract awarded February 1, 2016);
19 VA259-16-J-2506 (delivery order awarded February 1, 2016); VA259-17-J-2151
20 (delivery order awarded February 1, 2017); 36C259-19-N-0325 (delivery order
awarded February 1, 2019); 36C259-20-N-0157 (delivery order awarded
December 3, 2019).

21 ⁷ VA258-17-D-0029 (indefinite delivery contract awarded January 14, 2017);
VA258-17-F-0755 (delivery order awarded January 14, 2017).

1 63. Other federal agencies including the Centers for Disease Control and
2 Prevention and the Department of the Army have also awarded Logmet
3 approximately eight contract awards or modifications for radiopharmaceutical
4 products for total contract award amounts of over \$13 million.

5 64. For all but one of these contracts, the SBA did not issue a waiver
6 permitting Logmet to source products from a large business like Cardinal.

7 65. The sole exception of which UPPI is aware is Logmet's contract to
8 provide radiopharmaceuticals to the VA in Denver (number VA259-16-D-0159,
9 and the associated subsequent delivery orders). For this contract, the SBA issued
10 a waiver permitting the VA to offer the contract as a set-aside for an SDVOSB
11 that was distributing products manufactured by a large business. However,
12 Logmet's conduct does not fall within the scope of this waiver because Logmet
13 did not "distribute" the products under any reasonable understanding of what that
14 term means. It did not, for example, take possession of radiopharmaceuticals from
15 Cardinal and then deliver them to the Government; instead, it merely issued
16 invoices to the Government after Cardinal delivered the products. To the extent
17 Logmet represented that it would be distributing radiopharmaceuticals, or
18 otherwise playing a material role in the supply chain, in order to obtain a waiver
19 of subcontracting requirements, that representation was false or fraudulent, and
20 materially tainted the contracting process.

21

1 66. For every other contract at issue in this case, the SDVOSB
2 Defendants' bids were manifestly false or fraudulent because they could not have
3 hoped to comply with the applicable subcontracting requirements—which had not
4 been waived. Indeed, they had no intention of complying.

5 67. These VA contract solicitations use the North American Industry
6 Classification System (“NAICS”) code 325412, which is for pharmaceutical
7 preparation manufacturing. 13 C.F.R. § 121.201. The SBA has established a
8 threshold of the number of employees that a small business soliciting contracts for
9 pharmaceutical preparation manufacturing with NAICS code 325412 must not
10 exceed, which is 1,250. 13 C.F.R. § 121.201.

11 68. Cardinal Health 414, LLC has 3,000 employees and Cardinal Health,
12 Inc. has 37,300 employees. Neither qualify as “small businesses” for contracts
13 with NAICS code 325412. Thus, when these contracts were set aside for small
14 businesses, Cardinal would have been ineligible to bid on them. Cardinal is also
15 not an SDVOSB, and could not bid on contracts set aside for SDVOSBs.

16 69. For the VA contracts, the VA made explicit mandatory requirements
17 for contractors furnishing radiopharmaceutical products and services. The
18 following requirements appeared in VA solicitations for radiopharmaceutical
19 contracts, with some immaterial variations between the different solicitations.

20 70. First, the VA required contractors to provide proof of NRC licensure
21 with their bid. Further, the VA required that bidders thoroughly review the

1 specifications and be familiar with the area of coverage prior to submitting their
2 bid/offer in order to be fully aware of the supplies and services required.

3 71. Second, the VA required that the contractor shall provide all labor,
4 compounding, supervision, and transportation necessary to provide daily
5 deliveries to the Department of Veterans Affairs, at the specific pharmacy location
6 identified in the contract.

7 72. Third, the VA required its contractors to perform the necessary quality
8 control procedures and meet all applicable agency rules and regulations (including
9 NRC, FDA, Department of Transportation, and other agency rules) specific to the
10 manufacture and distribution of radiopharmaceuticals.

11 73. Fourth, the VA required that the awardees of these contracts be
12 regularly established in the business that is called for, and able to show evidence
13 of the reliability, ability, experience, equipment, facilities, and personnel directly
14 employed or supervised by them to render prompt and satisfactory service.

15 74. Fifth, the VA required that supplies shall be handled in accordance
16 with vendor's licensing and NRC regulations.

17 75. Sixth, the VA required that the vendor shall be responsible for proper
18 disposal/removal of radioactive waste materials or make clear its intention of
19 requiring the VA Medical Centers nuclear medicine service line to dispose and
20 remove.

21

1 76. Seventh, the VA required that a licensed radiopharmacist be available
2 for consultation inquiries, via telephone during normal duty hours, Monday
3 through Friday, 7:00 am to 5:00 pm.

4 77. Eighth, the VA required that all radiopharmaceuticals supplied by the
5 Vendor shall meet FDA and NRC standards for sterility, freedom from pyrogens
6 and contaminants, and radiochemical integrity.

7 78. Ninth, the VA required that in the event a quality control or material
8 defect is suspected and/or detected by a VA Nuclear Medicine Technologist, the
9 vendor will be requested to provide any consultation necessary to alleviate any
10 said suspicion and/or defect by the following: (i) provide technical expertise in
11 calibration; (ii) provide professional examination of product, submit
12 recommendation to Contracting Officer; (iii) make expedient replacement of any
13 product suspected of being deficient.

14 79. Independently, the contracts were subject to the restrictions on set-
15 asides discussed previously: the small business contractor was required to perform
16 at least 50% of the work on the contract (or keep 50% of the revenue), and could
17 not subcontract the work to a large business or a business that was not similarly
18 situated without first obtaining a waiver from the SBA.

19 80. In bidding on the contracts, the SDVOSB Defendants either explicitly
20 or implicitly represented that they would comply with all of these conditions. At
21 all relevant times, however, they knew that they would not and could not comply.

1 81. The SDVOSB Defendants knew that they could not perform the
2 contracts because they knew that they lacked the required licenses; they could not
3 themselves compound and deliver the drugs; they could not ensure the quality of
4 the drugs; they did not have the ability, experience, equipment, facilities, and
5 personnel to provide satisfactory service; they did not have the ability to deal with
6 nuclear waste; they did not have a licensed radiopharmacist on staff; and they did
7 not have the technical expertise to assist if something went wrong.

8 82. Indeed, the SDVOSB Defendants could not have thought otherwise.
9 Caring Hands, for example, reports on its website that it has ten employees, with
10 a principal place of business in Ridgeland, South Carolina.

11 83. On its registration page with the System for Award Management
12 (“SAM”), Caring Hands identifies eight “plant” location addresses in South
13 Carolina, Georgia, and Alabama. Each location lists Obie Bacon as the owner, and
14 identifies the owner address as the location in Ridgeland, South Carolina.

15 84. These facilities were manifestly inadequate to perform the contracts
16 Caring Hands bid on and won. None of Caring Hands’ facilities appear capable of
17 manufacturing, processing, or distributing radiopharmaceuticals. Many of Caring
18 Hands’ contracts were to deliver radiopharmaceuticals in locations that were
19 nowhere near its facilities (for example, Miami). Caring Hands’ vehicles (a
20 delivery van fleet) likewise do not appear suited for delivering
21 radiopharmaceuticals. Properly certified vehicles include refrigerated units and

1 bear explicit radioactive symbols because of the dangerous and potentially toxic
2 substances the vehicle is transporting; Caring Hands' vans do not.

3 85. Caring Hands also lacked the necessary license from the NRC or an
4 Agreement State to manufacture radiopharmaceuticals.

5 86. During the time it bid and allegedly performed on these contracts,
6 Logmet certified its principal place of business as 301 Little Gem Court,
7 McDonough, Georgia 30253, which is a single-family residence.

8 87. Logmet is registered on SAM as a sole proprietorship. In its SAM
9 registration, Logmet certified that it did not intend to use any other plants or
10 facilities located at a different address than this single-family residence in the
11 fulfillment of its contract awards. In an October 2018 change to its SAM
12 registration, Logmet stated its address as 5240 Snapfinger Park Drive Suite 115
13 Decatur, GA 30035-4054, which is an office complex rental unit, and not a nuclear
14 pharmacy.

15 88. Logmet bid on and won contracts in locations far away from its sole
16 location, including in New Mexico and Colorado.

17 89. In its sworn registration, Logmet certifies that it is capable to provide
18 supplies and services that fall under 54 unique NAICS codes, including a code that
19 governs (among other products) radiopharmaceuticals (code 325412).

20 90. Like Caring Hands, Logmet lacks a license from the NRC or an
21 Agreement State to manufacture radiopharmaceuticals.

1 91. From these facts, it is apparent that Logmet lacks the necessary
2 licensure, facilities, and personnel to perform the contracts for
3 radiopharmaceuticals that it bid on and won. Indeed, Logmet appears to have no
4 meaningful manufacturing, processing, or delivery infrastructure capable of
5 handling radiopharmaceuticals.

6 92. Notwithstanding their inability to perform the contracts, the SDVOSB
7 Defendants bid as if they could perform. These bids included representations—at
8 least implicit ones—that the SDVOSB Defendants were capable of performing the
9 contracts (*i.e.*, supplying the requested radiopharmaceuticals) in accordance with
10 all of the applicable requirements, including restrictions on subcontracting that
11 would have precluded the SDVOSB Defendants from allowing Cardinal to
12 perform the majority of the work, and receive the majority of the benefit, from the
13 contract. In so doing, the SDVOSB Defendants misled the Government into
14 awarding the contracts to them.

15 93. The SDVOSB Defendants felt confident bidding this way because
16 they had already arranged for Cardinal to perform the contracts in their stead.
17 Together with Cardinal, they planned for Cardinal to service the Government's
18 pharmacies once the contracts were awarded, and for the SDVOSB Defendants to
19 only handle the invoicing, as opposed to the actual work.

20 94. The SDVOSB Defendants and Cardinal knew that this arrangement
21 violated the applicable restrictions on subcontracting because Cardinal was not

1 itself a small business, and was not an approved contractor to perform contracts
2 set aside for SDVOSBs. Moreover, with the possible exception of Logmet's
3 Colorado contract, Defendants knew that no waiver had been issued permitting the
4 SDVOSB Defendants to subcontract the majority of the work on the contracts to
5 an entity like Cardinal.

6 95. The SDVOSB Defendants sometimes mentioned Cardinal in their
7 bids. For example, they may have included Cardinal's NRC license, or identified
8 Cardinal as a supplier. But even in these cases, the SDVOSB Defendants were not
9 honest to the Government because they never disclosed the extremely limited role
10 they intended to play. Instead, they stated that they would be acting as authorized
11 distributors, or something similar, implying that they would be taking possession
12 of and delivering radiopharmaceutical products to the Government. The
13 SDVOSBs' bids thus obscured the true nature of their role, which was to send
14 invoices and collect a markup, while Cardinal performed all of the core obligations
15 under the contract. Moreover, these limited disclosures of Cardinal's role did not
16 negate the contrary misrepresentations—explicit and implicit—that the SDVOSBs
17 would perform the contracts in accordance with all requirements, including
18 subcontracting restrictions. And they did not make Cardinal's involvement any
19 more lawful.

20 96. Based on these facts, any representation, explicit or implicit, that the
21 SDVOSB Defendants were capable of performing contracts to provide

1 radiopharmaceuticals to the Government, or were actually performing 50% or
2 more of the work under these contracts, or retaining 50% or more of the revenue,
3 were necessarily false—and could only have been made either with actual
4 knowledge or reckless disregard to their falsity. Bids, of course, were prerequisites
5 to contract awards, and therefore payment. Every bid the SDVOSB Defendants
6 submitted was therefore a false or fraudulent statement or record material to a false
7 claim.⁸

8 97. On information and belief, the SDVOSB Defendants were also
9 dishonest during the pre-solicitation period. When the Government conducted pre-
10 solicitation market research and asked SDVOSBs whether they could perform the
11 contracts to determine the appropriateness of an SDVOSB set-aside, the SDVOSB
12 Defendants told the Government that they could when they knew they could not.
13 Taking the contractors at their word, the Government relied upon their
14 representations. In this way, the SDVOSB Defendants misled the Government into
15 setting aside contracts. These false statements, and any records used to substantiate
16 them, were material to false or fraudulent claims.

17 98. As one example, Caring Hands made false representations to the VA
18 during market research relating to the contract to supply radiopharmaceuticals to
19

20 ⁸ The one possible exception is Logmet's Denver contract, where falsity will turn
21 on whether Logmet misrepresented the role it intended to play in the
performance of the contract.

1 the VA in Durham, North Carolina (the first radiopharmaceutical contract Caring
2 Hands received). Caring Hands represented that it was capable of bidding on the
3 contract, which resulted in the contract being set aside and then awarded to Caring
4 Hands. That created a precedent, paving the way for future set-asides for Caring
5 Hands because future market research would show that Caring Hands had
6 previously been awarded a radiopharmaceutical supply contract.

7 99. As a second example, Logmet made false representations to the VA
8 during market research relating to the contract to supply radiopharmaceuticals to
9 the VA in Albuquerque, New Mexico. In response to a request for information
10 from the VA, Logmet falsely represented that it was capable of performing the
11 contract, including because it had warehouses and other infrastructure in place that
12 would allow it to deliver the specified products rapidly in Albuquerque. In reality,
13 Logmet had no such capabilities. These misrepresentations resulted in the contract
14 being set aside and then awarded to Logmet.

15 100. The SDVOSB Defendants also made false promises at the moment of
16 contracting. They agreed to comply with all relevant contractual requirements,
17 including requirements to actually perform a majority of the work, and restrictions
18 on subcontracting, when they had no intention of complying.

19 101. Once the contracts were awarded, the SDVOSB Defendants did not
20 perform 50% of the work, spend 50% of the cost of the products, or retain 50% of
21 the benefit, as required under the contracts. Instead, the typical pattern was that

1 the Government ordered drugs from Cardinal, the SDVOSB Defendants billed the
2 Government, and Cardinal billed the SDVOSB Defendants slightly less than they
3 had billed the Government. In other words, the SDVOSB Defendants did almost
4 no work on the contracts and added no value to the Government's purchases, but
5 instead acted solely as middlemen—and not even middlemen for products, but
6 only for payments. They kept the difference between the prices they charged to
7 the Government and the prices Cardinal charged to them, which were pure
8 markup. Cardinal received most of the money.

9 102. Sometimes, contracting officers conducted additional investigation.
10 When the SDVOSB Defendants were asked whether they would perform or were
11 performing at least 50% of the work under the contracts, they falsely answered
12 affirmatively.

13 103. As one example, Logmet was asked in 2017 to provide details of its
14 role supplying radiopharmaceuticals in Albuquerque. It responded that it was
15 providing customer service, scheduling, billing, quality assurance, quality control,
16 and taking care of any other issues that may arise, while Cardinal was supplying
17 the products. In reality, Logmet was only billing the Government; it had no ability
18 to conduct any actual customer service, quality assurance, or quality control. The
19 contracting officer informed Logmet that it had been awarded the contract on the
20 belief that Logmet would be performing 50% of the work. Logmet's contract was
21 terminated shortly after its limited role was revealed.

1 104. The invoices issued by the SDVOSB Defendants to the Government
2 as part of this scheme were doubly culpable under the FCA. First, they were false
3 or fraudulent claims for payment because they were tainted by the antecedent fraud
4 that resulted in the contracts being awarded to the SDVOSB Defendants, and also
5 because they implied that the SDVOSB Defendants had performed the contracts
6 in conformity with all applicable requirements. Second, they were false records or
7 statements because they implied that the SDVOSB Defendants were actually
8 performing meaningful work on the contracts, when they were not. The fact that
9 Defendants submitted such invoices for payment pursuant to the relevant contracts
10 is clear from the fact that the Government has paid Defendants millions of dollars
11 under these same contracts. The invoices themselves are in the exclusive
12 possession of the billing Defendants and the Government, and Defendants are well
13 aware of their contents already.

14 105. The SDVOSB Defendants did not act alone. Cardinal caused their
15 misrepresentations. Indeed, the SDVOSB Defendants could not have bid on
16 contracts for radiopharmaceuticals unless they first confirmed with Cardinal that
17 it could and would supply the products. When the Government wanted
18 radiopharmaceutical products, it would ask—during market research and in its
19 solicitations—for specific products at specific locations. The SDVOSB
20 Defendants could not represent that they could perform the contracts unless they
21 first confirmed with Cardinal that it was able to fulfill those requirements.

1 Cardinal's approval thus directly caused the SDVOSBs' false statements—
2 because without Cardinal's blessing, the statements never would have been made.

3 106. Moreover, the SDVOSB Defendants would have been unable to
4 prepare the highly technical bids to supply radiopharmaceuticals without help
5 from an entity like Cardinal. It was Cardinal, and not the SDVOSB Defendants,
6 that truly understood the products the Government was seeking to buy, and the
7 process of selling those products. It knew of the subtle distinctions between
8 various isotopes and dosages, and knew about the intended clinical uses of the
9 products. It also knew how the products had to be compounded, handled, labeled,
10 and transported. The SDVOSB Defendants did not. The same is true of pricing:
11 Unless Cardinal provided pricing to the SDVOSBs, they could not know how
12 much to charge the Government so that they could pay Cardinal and still make a
13 profit through their markup. Without such assistance from Cardinal, the SDVOSB
14 Defendants would not have been able to bid.

15 107. Cardinal's involvement was also critical to the SDVOSB Defendants'
16 ability to keep their contracts. The SDVOSB Defendants had no independent
17 supply of radiopharmaceutical products, and so without Cardinal present to supply
18 the products, the SDVOSB Defendants' contracts would have been promptly
19 terminated or revoked.

20 108. Finally, Cardinal may have caused contracts to be set aside by working
21 with other SDVOSBs to encourage them to bid on contracts, with no expectation

1 of winning them, in order to trigger the Rule of Two and restrict competition to its
2 preferred SDVOSB proxies. One such entity is Standard Medical Equipment
3 Systems, LLC (“Standard Medical”), which self-certified that it was an SDVOSB
4 with expertise and personnel qualified in the business of radiopharmaceutical
5 products (NAICS Code 325412) on an Interested Business Vendor List for a
6 contract.

7 109. Like Caring Hands and Logmet, Standard Medical was not qualified
8 to furnish these highly specialized services because it lacked appropriate facilities,
9 licenses, and personnel.

10 110. Although Standard Medical was referenced on multiple
11 radiopharmaceutical solicitations as an interested business vendor, it did not win
12 any of those contracts.

13 111. Standard Medical may have accepted remuneration from Cardinal to
14 be another SDVOSB that would trigger the application of the Rule of Two and
15 compel the contracting officer to ultimately award the contract to a sham SDVOSB
16 acting on behalf of Cardinal like Caring Hands or Logmet.

17 112. Cardinal may have used other SDVOSB proxies as well, including an
18 entity called MedVet Supply, to bid on and trigger the Rule of Two.

19 113. In sum, the SDVOSB Defendants, collaborating with and acting as
20 front companies for Cardinal, misled the Government into setting aside contracts
21 for radiopharmaceuticals, and into awarding those contracts to the SDVOSB

1 Defendants when it otherwise would not have. They consummated their fraud by
2 submitting false or misleading invoices to the Government.

3 114. This conduct violated 31 U.S.C. § 3729(a)(1)(A) because it resulted
4 in the presentment of false or fraudulent claims for payment (invoices) under the
5 contracts by the SDVOSB Defendants. It violated 31 U.S.C. § 3729(a)(1)(B)
6 because it involved the creation and use of false statements or records (market
7 research responses, bids, invoices, and other communications with the
8 Government) that were material to false claims. And it violated 31 U.S.C.
9 § 3729(a)(1)(C) because it involved a conspiracy to violate the FCA.

10 **A. Defendants’ Misrepresentations Were Material.**

11 115. Under the FCA, a false statement, or a violation of a regulatory
12 requirement, is “material” if it has “a natural tendency to influence, or be capable
13 of influencing, the payment or receipt of money or property.” 31 U.S.C.
14 § 3729(b)(4). In the context of fraud during the contracting process, material
15 wrongs are those that have a natural tendency to influence, or be capable of
16 influencing, the Government’s contracting decisions. Materiality is not the same
17 as causation; instead, it is more accurately described as potential causation. The
18 materiality inquiry is also holistic, and no single fact is dispositive.

19 116. Defendants’ wrongdoing was material. The SDVOSB Defendants’
20 representations during the market research process that they were capable of
21 performing the contract were important to the Government’s decision to set aside

1 the contract. Indeed, the set-asides could not legally have occurred unless the
2 Government concluded that SDVOSBs were capable of performing the contract.

3 117. The SDVOSB Defendants' representations during the solicitation
4 process were likewise material because the Government naturally would not have
5 wanted to award contracts to entities that were not capable of performing them. It
6 also would not have wanted to award set-aside contracts to entities that intended
7 to do essentially no work, and outsource essentially all of the work to a large
8 business.

9 118. The materiality of Defendants' misrepresentations is confirmed by the
10 Government's actions. On at least four occasions, after third-party protests, the
11 VA either changed set-aside designations or cancelled contracts that had been
12 awarded to SDVOSBs.

13 119. In September 2016, Shertech Pharmacy Charlotte, LLC, a UPPI
14 member, filed a pre-award protest against the Department of Veterans Affairs
15 Multiple Delivery Sites of Care in North Carolina including W.G. Hefner VA
16 Medical Center, Salisbury, NC; Charlotte Health Care Center, Charlotte, NC; and
17 Kernersville Health Care Center, Kernersville, NC pursuant to Solicitation No.
18 VA 246-16-Q-1208.

19 120. Shertech Pharmacy is a small, woman-owned business, which is
20 headquartered in Charlotte, North Carolina, and is a properly licensed entity that
21 furnishes radiopharmaceutical products.

1 121. Solicitation No. VA246-16-Q-1208 was for the manufacture and
2 distribution of radiopharmaceuticals used for diagnostic imaging services and
3 functional studies of organs (identified with NAICS code 325412) and was set
4 aside for SDVOSBs.

5 122. In submitting its pre-award protest on August 18, 2016, Shertech
6 stated that it was unreasonable to set aside the contract for a SDVOSB when there
7 was no SDVOSB with the proper licensing to provide the necessary services
8 within the required logistical area of the VA pharmacies.

9 123. Shertech specifically noted that the SDVOSBs listed on the Interested
10 Vendors List for this Solicitation “were not companies that could perform the
11 services requested.” In particular, Shertech stated “that the companies on the
12 Interested Vendors List are not licensed to receive, possess, manufacture, prepare
13 radiopharmaceuticals combining Tc-99m with the radiopharmaceutical ligand,
14 perform quality control,” among other deficiencies. Shertech also informed the
15 contracting officer that none of the listed SDVOSBs possessed the necessary NRC
16 licensure.

17 124. The contracting officer for solicitation VA246-16-Q-1208 responded
18 on September 6, 2016 stating that “[t]here is no actual solicitation at this time (still
19 in the pre-solicitation phase); however, there are no plans to change the set-aside
20 requirement at this time.” Email from D. Hurlock (VA Contracting Officer) to K.
21

1 Sheriff (Shertech Pharmacy representative), Re: Salisbury VA
2 Radiopharmaceuticals VA 246-16-Q-1208, dated September 6, 2017.

3 125. After a month, and likely because of the protest, the contracting officer
4 temporarily suspended the new radiopharmaceutical product solicitation for the
5 Salisbury VA Medical Center and extended the contract to the original awardee,
6 Shertech Pharmacy, through a contract modification.

7 126. UPPI representatives filed a similar pre-award protest against the
8 SDVOSB set aside on solicitation VA246-14-Q-0483 to furnish the same
9 radiopharmaceuticals to a VA Medical Center in Fayetteville, NC. The contracting
10 officer in that instance removed the SDVOSB designation and changed the
11 contract to a small business set aside solicitation.

12 127. In a third instance, on July 16, 2015, the Comptroller General from the
13 Government Accountability Office (“GAO”) issued a decision in a VA
14 radiopharmacy bid protest filed by a small radiopharmaceutical business, Triad
15 Isotopes, Inc., finding that the Rule of Two was improperly applied when awarding
16 the contract to a SDVOSB.

17 128. The decision found that “the agency’s market research was insufficient
18 to conclude that the agency would likely receive quotations from at least two
19 responsible small business concerns that could meet the requirements in the RFQ
20 at a fair market price, and therefore the agency’s decision to restrict the solicitation
21 to small business concerns was unreasonable.”

1 129. In a fourth instance, the VA terminated the contract award to Logmet
2 in Albuquerque, New Mexico after Senator Martin Heinrich, on behalf of a UPPI
3 member, raised concerns about Logmet subcontracting the radiopharmaceutical
4 work required in the contract to a large business. UPPI understood that large
5 business to be Cardinal.⁹

6 130. In all four of these protests, when UPPI members raised concerns and
7 otherwise explained that the SDVOSBs competing for and ultimately awarded
8 these contracts were unqualified for the contract awards, the VA recognized these
9 concerns as valid and withdrew or terminated the contract awards. Those
10 withdrawals confirm that the SDVOSB Defendants' inability to supply
11 radiopharmaceuticals in compliance with the contract conditions was material to
12 Government contracting and payment decisions.

13 131. Additional evidence further confirms the materiality of the restrictions
14 on set-asides. Congress made express its intent regarding the materiality of any

15
16 ⁹ This example also illustrates why Logmet's obtaining a waiver of the
17 subcontracting restrictions for its contract with the VA in Denver does not weigh
18 against materiality. The termination of Logmet's Albuquerque contract shows
19 that the Denver waiver does not establish a general policy of indifference to
20 subcontracting requirements. On the contrary, it shows that unless a contractor
21 obtains a waiver—which Defendants did not do in any other case—its failure to
comply with subcontracting restrictions is highly likely to influence the
Government's decisions. Moreover, as explained *supra*, it would be premature to
draw any conclusions from Logmet's Denver waiver because that waiver may
have been issued on false pretenses, *i.e.*, that Logmet would act as an actual
distributor, which it did not do—or it may be otherwise inapplicable to Logmet's
actual conduct.

1 misrepresentations made by a contractor when bidding on a contract solicitation
2 that was either explicitly a small business or SDVOSB set aside or implicitly
3 intended for a SDVOSB pursuant to the Rule of Two. As Congress provided, such
4 a contractor “shall be subject to” civil prosecution under the FCA under 15 U.S.C.
5 § 637(m)(5), and as applied expressly to SDVOSBs under 15 U.S.C. § 657f(d)
6 (“Enforcement; penalties”):

7 (C) Penalties In addition to the penalties described in section 645(d) of
8 this title [15 U.S.C.], any small business concern that is determined by
9 the Administrator to have misrepresented the status of that concern as
a small business concern owned and controlled by [] [service-disabled
veterans] for purposes of this subsection, shall be subject to—

10 (i) section 1001 of title 18; and

11 (ii) sections 3729 through 3733 of title 31 [the False Claims
Act].”

12 132. The Government in enforcement actions has also repeatedly observed
13 the need to police these programs so that they are not abused by unscrupulous
14 businesses to the detriment of the Government and of the programs’ intended
15 beneficiaries. *See, e.g.,* Inspector General, *Audit of DoD Service-Disabled*
16 *Veteran-Owned Small Business Contract Awards*, Report No. DODIG-2020-063,
17 at 6-7 (2020); Government Accountability Office, *Defense Procurement: Ongoing*
18 *DOD Fraud Risk Assessment Efforts Should Include Contractor Ownership*,
19 Report No. GAO-20-106, at 23-24 (2019); U.S. Dep’t of Justice, *Government*
20 *Contractor Charged in Scheme to Defraud U.S. Department of Veterans Affairs*

1 (Dec. 19, 2019), [https://www.justice.gov/usao-ak/pr/government-contractor-](https://www.justice.gov/usao-ak/pr/government-contractor-charged-scheme-defraud-us-department-veterans-affairs)
2 [charged-scheme-defraud-us-department-veterans-affairs](https://www.justice.gov/usao-ak/pr/government-contractor-charged-scheme-defraud-us-department-veterans-affairs); U.S. Dep't of Justice,
3 *Engineering Firm Agrees to Pay over \$5 Million to Settle False Claims Act*
4 *Allegations Related to Small Business, Veterans Set-Asides* (Dec. 21, 2018),
5 [https://www.justice.gov/usao-cdca/pr/engineering-firm-agrees-pay-over-5-](https://www.justice.gov/usao-cdca/pr/engineering-firm-agrees-pay-over-5-million-settle-false-claims-act-allegations-related)
6 [million-settle-false-claims-act-allegations-related](https://www.justice.gov/usao-cdca/pr/engineering-firm-agrees-pay-over-5-million-settle-false-claims-act-allegations-related); U.S. Dep't of Justice,
7 *Government Contractors Found Guilty in \$11 Million Veteran Set-Aside Fraud*
8 *Scheme* (Nov. 21, 2018), [https://www.justice.gov/usao-sdca/pr/government-](https://www.justice.gov/usao-sdca/pr/government-contractors-found-guilty-11-million-veteran-set-aside-fraud-scheme)
9 [contractors-found-guilty-11-million-veteran-set-aside-fraud-scheme](https://www.justice.gov/usao-sdca/pr/government-contractors-found-guilty-11-million-veteran-set-aside-fraud-scheme); U.S. Dep't
10 of Justice, *Local Business Owner Convicted of Conspiring to Defraud the VA* (May
11 1, 2018), [https://www.justice.gov/usao-sdtx/pr/local-business-owner-convicted-](https://www.justice.gov/usao-sdtx/pr/local-business-owner-convicted-conspiring-defraud-va)
12 [conspiring-defraud-va](https://www.justice.gov/usao-sdtx/pr/local-business-owner-convicted-conspiring-defraud-va); U.S. Dep't of Justice, *Utah Resident Pleads Guilty To*
13 *Devising Scheme To Obtain Construction Contracts Set Aside For Service-*
14 *Disabled Veteran-Owned Businesses* (Feb. 15, 2018),
15 [https://www.justice.gov/usao-ut/pr/utah-resident-pleads-guilty-devising-scheme-](https://www.justice.gov/usao-ut/pr/utah-resident-pleads-guilty-devising-scheme-obtain-construction-contracts-set-aside)
16 [obtain-construction-contracts-set-aside](https://www.justice.gov/usao-ut/pr/utah-resident-pleads-guilty-devising-scheme-obtain-construction-contracts-set-aside); U.S. Dep't of Justice, *Defense Contractor*
17 *ADS Inc. Agrees to Pay \$16 Million to Settle False Claims Act Allegations*
18 *Concerning Fraudulently Obtained Small Business Contracts* (Aug. 10, 2017),
19 [https://www.justice.gov/opa/pr/defense-contractor-ads-inc-agrees-pay-16-](https://www.justice.gov/opa/pr/defense-contractor-ads-inc-agrees-pay-16-million-settle-false-claims-act-allegations)
20 [million-settle-false-claims-act-allegations](https://www.justice.gov/opa/pr/defense-contractor-ads-inc-agrees-pay-16-million-settle-false-claims-act-allegations); U.S. Dep't of Justice, *Construction*
21 *Company Owners, KC Veteran Indicted in \$13.8 Million 'Rent-a-Vet' Scheme*

1 (Jan. 13, 2017), [https://www.justice.gov/usao-wdmo/pr/construction-company-](https://www.justice.gov/usao-wdmo/pr/construction-company-owner-kc-veteran-indicted-138-million-rent-vet-scheme)
2 [owner-kc-veteran-indicted-138-million-rent-vet-scheme](https://www.justice.gov/usao-wdmo/pr/construction-company-owner-kc-veteran-indicted-138-million-rent-vet-scheme); U.S. Dep’t of Justice,
3 *Former MCC Construction Company Officer and Owner Pleads Guilty to*
4 *Conspiring to Obstruct Government Proceeding* (June 22, 2016),
5 [https://www.justice.gov/usao-dc/pr/former-mcc-construction-company-officer-](https://www.justice.gov/usao-dc/pr/former-mcc-construction-company-officer-and-owner-pleads-guilty-conspiring-obstruct)
6 [and-owner-pleads-guilty-conspiring-obstruct](https://www.justice.gov/usao-dc/pr/former-mcc-construction-company-officer-and-owner-pleads-guilty-conspiring-obstruct). In these reports and enforcement
7 actions, the Government has emphasized that fraudulently passing work through
8 eligible small businesses to a large business does not provide taxpayers the best
9 value and certainly does not support the role of small businesses as engines of
10 economic development and job creation. In fact, it subverts the purpose of
11 preferential contracting programs and harms the small businesses the programs are
12 designed to assist.

13 133. Indeed, this case is similar to a recent case in this District. In *United*
14 *States ex rel. Savage v. Washington Closure Hanford LLC*, No. 2:10-CV-05051-
15 SMJ (E.D. Wa.), the complaint alleged that the defendants engaged in
16 subcontracting fraud by promising to contract with small businesses, but actually
17 funneling the work to large businesses. After the case survived a motion to dismiss
18 and a motion for summary judgment, this Court (Mendoza, J.), explained that the
19 damages were “properly calculated based on the improperly paid contract amount,
20 without reference to value,” because “the alleged harm here is loss of business and
21 experience going to eligible small businesses. This harm is not related to whether

1 or not the Government received the services it bargained for under the contract.”
2 *United States ex rel. Savage v. Washington Closure Hanford LLC*, 2017 WL
3 3667709, at *4 (E.D. Wash. Aug. 24, 2017). The case subsequently settled, and in
4 connection with the settlement, the U.S. Attorney explained that “[s]mall business
5 fraud not only harms the taxpayers . . . but legitimate small disadvantaged
6 businesses that do not have the opportunity to fairly compete for and perform
7 subcontracts.” U.S. Dep’t of Justice, *Washington Closure Hanford Agrees to Pay*
8 *\$3.2 Million to Settle Hanford Subcontract Small Business Fraud Allegations*
9 (June 7, 2018), [https://www.justice.gov/usao-edwa/pr/washington-closure-](https://www.justice.gov/usao-edwa/pr/washington-closure-hanford-agrees-pay-32-million-settle-hanford-subcontract-small)
10 [hanford-agrees-pay-32-million-settle-hanford-subcontract-small](https://www.justice.gov/usao-edwa/pr/washington-closure-hanford-agrees-pay-32-million-settle-hanford-subcontract-small).

11 134. None of this is surprising in light of the fact that Congress has
12 legislated in this area, and agencies have issued detailed regulations establishing
13 limits on set-aside programs. Indeed, set-aside programs for small and
14 disadvantaged businesses could not function if they were not appropriately limited
15 to those businesses. Instead, small businesses would become pass-throughs for
16 large businesses, which would undermine competition and inflate the
17 Government’s costs while failing to actually foster the development of small
18 businesses. Every reasonable person would regard violations of those limitations
19 as material to contracting decisions made under those programs. The United States
20 Government surely does.

21

1 **B. Defendants’ Fraud Induced the Government to Contract with**
2 **Them.**

3 135. Some courts have held that in order to establish liability under a theory
4 of fraudulent inducement, the plaintiff must show that the defendant’s conduct
5 caused the Government to enter into a contract. Relator disagrees with that
6 understanding of the law because, as a general matter, the FCA does not require a
7 showing of causation to establish a violation; it merely requires presentment of a
8 false claim. To the extent causation is required, it is present here because
9 Defendants’ misrepresentations caused the Government to: (i) set aside these
10 radiopharmaceutical contracts; and/or (ii) award them to the SDVOSB
11 Defendants, when it otherwise would not have.

12 136. Had the SDVOSB Defendants honestly represented during market
13 research that they were unable to perform at least 50% of the work under the
14 contracts, the contracts would not have been set aside for SDVOSBs, and would
15 not have been awarded to the SDVOSB Defendants.

16 137. Instead, the contracting officers would likely have attempted to
17 determine whether other preferred businesses—*e.g.*, woman-owned small
18 businesses, or minority-owned small businesses—were able to perform the
19 contracts. Had those inquiries occurred, the Government frequently would have
20 discovered that such small businesses were available and capable of performing
21

1 the work, and would have awarded them the business. Indeed, many UPPI
2 members fit that bill precisely.

3 138. If a sufficient number of capable small businesses were not available,
4 the solicitations would have been unrestricted, and the Government would have
5 awarded the contract to the most competitive bidder—and not the SDVOSB
6 Defendants.

7 139. Even after the market research process concluded, had the SDVOSB
8 Defendants come clean and honestly represented during the bid process that they
9 were unable to perform at least 50% of the work under the contracts, the contracts
10 would not have been awarded to the SDVOSB Defendants.

11 140. Instead of being honest, however, Defendants misrepresented and
12 concealed that the “front companies” did little if any of the work. The result was
13 that legitimate, qualified small businesses lost these contracts, and the SDVOSB
14 Defendants won them.

15 141. It is well-established that when a party receives a federal contract as a
16 result of a material misrepresentation, each and every request for payment under
17 such contract constitutes a false claim. *See, e.g., United States v. Univ. of Phoenix*,
18 461 F.3d 1166, 1170-71 (9th Cir. 2006) (“[E]ach and every claim submitted under
19 a contract ... which was originally obtained by means of false statements or other
20 corrupt or fraudulent conduct ... constitutes a false claim”), *quoting* S. Rep. No.
21 99-345, at 9 (1986), reprinted in 1986 U.S.C.C.A.N. 5266, 5274; *United States v.*

1 *Lockheed Martin Eng'g & Sci. Servs. Co.*, 491 F.3d 254, 259 (5th Cir. 2007)
2 (noting that, where contract is awarded as a result of false representations,
3 subsequent claims for payment under the contract are “actionable false claims”
4 since “they derived from the original fraudulent misrepresentation”), *citing*
5 *Marcus v. Hess*, 317 U.S. 537, 543-44 (1943); *United States ex rel. Wilson v.*
6 *Kellogg Brown & Root, Inc.*, 525 F.3d 370, 376 (4th Cir. 2008) (“the term ‘false
7 or fraudulent claim’ includes those instances ‘when the contract or extension of
8 government benefit was obtained originally through false statements or fraudulent
9 conduct’”).

10 142. Because Defendants’ conduct caused the Government to contract with
11 the SDVOSB Defendants—indeed, because that was the intended outcome of
12 Defendants’ fraud—the fraudulent inducement theory applies here.

13 **C. Defendants Acted with Scienter.**

14 143. The FCA applies when a defendant acts “knowingly.” In this context,
15 the words “knowing” and “knowingly”:

16 (A) mean that a person, with respect to information—

17 (i) has actual knowledge of the information;

18 (ii) acts in deliberate ignorance of the truth or falsity of the
information; or

19 (iii) acts in reckless disregard of the truth or falsity of the information;
20 and

21 (B) require no proof of specific intent to defraud.

1 31 U.S.C. § 3729(b)(1).

2 144. Caring Hands, Logmet, and Cardinal all acted knowingly, as the FCA
3 uses that term. All three sets of Defendants understood the requirements applicable
4 to set-aside contracts, which prohibited the arrangement they implemented, but
5 nevertheless misled the Government into setting aside contracts for
6 radiopharmaceuticals for SDVOSBs and then awarding those contracts to the
7 SDVOSB Defendants—who could not perform them—so that Cardinal would
8 benefit. At a minimum, all three sets of Defendants were reckless about these
9 requirements, or deliberately indifferent to them.

10 145. The SDVOSB Defendants knew, were deliberately indifferent to the
11 fact, or were reckless about the fact that they could not perform more than 50% of
12 the work on these radiopharmaceutical contracts. The contractual requirements
13 were clear, and the SDVOSB Defendants met virtually none of them. Moreover,
14 no reasonable person could believe that the minimal work the SDVOSB
15 Defendants subsequently performed satisfied their obligation to perform the
16 contracts.

17 146. The SDVOSB Defendants knew, were deliberately indifferent to the
18 fact, or were reckless about the fact that they could not subcontract the majority of
19 the work under these radiopharmaceutical contracts to Cardinal, or any other large
20 business. Those requirements were clearly enshrined in the applicable regulations,
21 and on Government websites explaining the set-aside program.

1 147. The SDVOSB Defendants never intended to perform the contracts in
2 accordance with their requirements. Instead, they always planned to play only a
3 *de minimis* role, while Cardinal performed the vast majority of the work. They
4 knew, or were recklessly indifferent to the fact, that the Government would not
5 have awarded them contracts had it known the truth.

6 148. Cardinal knew, was deliberately indifferent to the fact, or was reckless
7 about the fact that the SDVOSB Defendants could not perform more than 50% of
8 the work on these radiopharmaceutical supply contracts. Indeed, Cardinal never
9 intended for the SDVOSB Defendants to do anything more than issue invoices; it
10 planned to do all the substantive work under the contracts itself, using the
11 SDVOSB Defendants as front companies.

12 149. Cardinal knew, was deliberately indifferent to the fact, or was reckless
13 about the fact that it was not an eligible subcontractor on radiopharmaceutical
14 supply contracts set aside for SDVOSBs. Cardinal is a sophisticated player in this
15 space, with detailed knowledge of the governing legal regime, and of how the set-
16 aside program works.

17 150. Cardinal's scienter is further supported by Government allegations
18 that Cardinal has attempted unlawfully to monopolize the market for
19 radiopharmaceuticals. In April 2015, the Federal Trade Commission filed a
20 complaint against Cardinal seeking injunctive and other equitable relief, including
21

1 disgorgement, *see FTC v. Cardinal Health*, Case No. 15-cv-3031 (S.D.N.Y. Apr.
2 20, 2015).

3 151. The FTC complaint alleged that Cardinal illegally monopolized 25
4 local markets, including Spokane, Washington, for the sale and distribution of
5 radiopharmaceuticals and forced hospitals and clinics to pay inflated prices for the
6 drugs.

7 152. The FTC explained that from 2003 through 2008, Cardinal used a
8 variety of tactics to ensure that the manufacturers would not disburse their
9 radiopharmaceuticals to any new competitors in those markets. *See id.*

10 153. The FTC concluded:

11 This conduct allowed Cardinal to maintain and exercise
12 monopoly power in each of the relevant markets. By
13 excluding potential rivals, Cardinal denied its customers
14 the benefits of competition and profited from the
15 monopoly prices it charged for all radiopharmaceuticals,
including HPAs, in the relevant markets. Importantly,
there was no efficiency benefit or legitimate business
justification.

16 Statement of the Federal Trade Commission, *In re: Cardinal Health, Inc.*, FTC
17 File No. 101-0006 (April 17, 2015).

18 154. Cardinal settled those allegations on or about April 20, 2015 for \$26.8
19 million and was ordered to restore competition in six markets where Cardinal
20 remains the dominant radiopharmacy. *See* FTC Press Release, *Cardinal Health*
21 *Agrees to Pay \$26.8 Million to Settle Charges it Monopolized 25 Markets for the*

1 *Sale of Radiopharmaceuticals to Hospitals and Clinics* (Apr. 20, 2015),
2 [https://www.ftc.gov/news-events/press-releases/2015/04/cardinal-health-agrees-](https://www.ftc.gov/news-events/press-releases/2015/04/cardinal-health-agrees-pay-268-million-settle-charges-it)
3 [pay-268-million-settle-charges-it](https://www.ftc.gov/news-events/press-releases/2015/04/cardinal-health-agrees-pay-268-million-settle-charges-it).

4 155. Cardinal is continuing to monopolize the radiopharmacy market
5 behind the cloak and protection of SDVOSBs.

6 156. Defendants' actions were not based on a good-faith misunderstanding
7 or a reasonable misinterpretation of the legal requirements. Instead, they were pure
8 opportunism. The SDVOSB Defendants willingly acted as front companies to
9 claim a markup from the Government. Cardinal used the SDVOSB Defendants to
10 avoid competition for Government contracts.

11 157. None of this was even vaguely necessary. The SDVOSB Defendants,
12 knowing that they were incapable of performing the contracts, could have
13 refrained from representing their ability to do so, and refrained from bidding.
14 Cardinal could have bid on contracts it was eligible to perform, and competed
15 fairly against other businesses.

16 158. This Amended Complaint alleges that the Government's contracting
17 officers were deceived by Defendants. In some instances, certain Government
18 officials—including pharmacists or contracting officers—may have known that
19 Cardinal was playing a role in the performance of the contracts. The extent of such
20 knowledge is not known. But any such knowledge does not negate Defendants'
21 scienter.

1 159. Pharmacists are not responsible for ensuring compliance with the
2 subcontracting restrictions on set-asides; indeed, it is unlikely that they were even
3 aware of those restrictions. Even if they had known the rules, pharmacists were
4 not in a position to measure whether SDVOSB Defendants were performing 50%
5 or more of the work under the contract. And even if they knew both the rules and
6 the facts, pharmacists cannot, through acquiescence, negate the import of clear
7 restrictions on subcontracting. Accordingly, their knowledge has no bearing on
8 scienter, and Defendants could not rely on any such knowledge to ratify their
9 noncompliance.

10 160. As the enforcement actions cited in the materiality section, *supra*,
11 illustrate, no contracting officer who knew the facts and the law could reasonably
12 and in good faith have awarded the contracts to the SDVOSB Defendants. Indeed,
13 contracting officers have been prosecuted for similar conduct, and bid protests
14 have succeeded notwithstanding contracting officers' actions. Accordingly, any
15 contracting officer who failed to object to Cardinal's participation was necessarily
16 unaware of the facts or the law, or was acting in bad faith. The contracting officers
17 may not have conducted an adequate inquiry; they may have taken the SDVOSB
18 Defendants at their word that they were performing at least 50% of the work; they
19 may not have followed up; they may not have understood the true relationship
20 between the SDVOSB Defendants and Cardinal; they may not have understood
21 how the subcontracting restrictions worked; or they may have been complicit in

1 Defendants' efforts to manipulate contracting preferences. Whatever the reason,
2 the actions of individual contracting officers cannot make policy for the VA or the
3 Government as a whole, or excuse noncompliance with clear rules. Accordingly,
4 Defendants could not have relied on the approval of contracting officers to ratify
5 their noncompliance.

6 **D. Defendants' Conduct Injured the Government.**

7 161. Defendants' conduct injured the Government in at least four ways.
8 First, it compromised the integrity of set-aside programs designed to help service
9 disabled veterans.

10 162. Second, Defendants' conduct undermined programs designed to help
11 other small and disadvantaged businesses, which never had the opportunity to bid
12 on these radiopharmaceutical supply contracts because Defendants unlawfully
13 caused them to be set aside for SDVOSBs who could not perform them for the
14 benefit of Cardinal, a large business with every advantage in the marketplace.

15 163. Third, Defendants' conduct caused the Government effectively to
16 contract with Cardinal, without full and fair competition—which is necessary for
17 contracts going to large businesses like Cardinal.

18 164. Fourth, Defendants' conduct caused the Government to pay sums to
19 the SDVOSB Defendants—who acted as nothing more than middlemen inflating
20 the cost of drugs supplied by Cardinal—that the Government otherwise would not
21 have paid. These amounts were obtained by means of presenting false or

1 fraudulent claims (invoices) to the Government under the fraudulently obtained
2 contracts.

3 165. Courts have flexibility to shape the measure of damages in FCA cases.
4 The most common outcome in cases like this one is that the entire contract amount
5 constitutes the Government's damages.

6 **IV. COUNTS OF COMPLAINT**

7 **COUNT I**

8 **Federal False Claims Act:**

9 **31 U.S.C. § 3729(a)(1)(A)**

10 379. The allegations in the preceding paragraphs are incorporated by
11 reference.

12 380. Defendants knowingly presented or caused to be presented numerous
13 false or fraudulent claims for payment or approval in violation of 31 U.S.C.
14 § 3729(a)(1)(A).

15 381. By virtue of these false or fraudulent claims, Defendants are jointly
16 and severally liable to the United States for incurred damages resulting from their
17 conduct, trebled, plus civil penalties for each violation of the Act.

18 382. As a result of Defendants' violations, the United States has suffered
19 damages in an amount to be determined at trial.
20
21

COUNT II

Federal False Claims Act:

31 U.S.C. § 3729(a)(1)(B)

383. The allegations in the preceding paragraphs are incorporated by reference.

384. Defendants knowingly made, used, or caused to be made or used false records or statements material to false or fraudulent claims, in violation of 31 U.S.C. § 3729(a)(1)(B).

385. By virtue of these false records and statements, Defendants are jointly and severally liable to the United States for incurred damages resulting from their conduct, trebled, plus civil penalties for each violation of the Act.

386. As a result of Defendants' violations, the United States has suffered damages in an amount to be determined at trial.

COUNT III

Federal False Claims Act:

31 U.S.C. § 3729(a)(1)(C)

387. The allegations in the preceding paragraphs are incorporated by reference.

388. Defendants knowingly conspired to commit a violation of subparagraphs (A), and (B), in violation of 31 U.S.C. § 3729(a)(1)(C).

389. By virtue of this conspiracy, Defendants are jointly and severally liable to the United States for incurred damages resulting from their conduct, trebled, plus civil penalties for each violation of the Act.

1 390. As a result of Defendants' violations, the United States has suffered
2 damages in an amount to be determined at trial.

3 WHEREFORE, Relator requests that judgment be entered in its favor
4 against Defendants as follows:

5 (a) Pursuant to Counts I through III, for treble the amount of damages
6 incurred by the Government, in an amount to be determined at trial, and a civil
7 penalty for each false claim submitted or caused to be submitted, and each record
8 or statement made, used, presented or caused to be made, by Defendants;

9 (b) Awarding Relator its relator's share pursuant to 31 U.S.C.
10 § 3730(d)(2);

11 (c) Awarding Relator costs and attorneys' fees pursuant to 31 U.S.C.
12 § 3730(d)(2); and

13 (d) Awarding such other relief as is appropriate under the law.

14 **V. JURY DEMAND**

15 Plaintiffs hereby request a jury trial in this matter.

16 DATED this 24th day of August, 2020.

17 **PAUKERT & TROPPEMANN, PLLC**

18 By: /s/ Kathleen H. Paukert

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CERTIFICATE OF SERVICE

I hereby certify that on August 24, 2020, I, KATHLEEN H. PAUKERT, electronically filed the foregoing with the Clerk of the Court using the CM/ECF System, which in turn automatically generated a Notice of Electronic Filing (NEF) to all parties in the case who are registered users of the CM/ECF system. The NEF for the foregoing specifically identifies recipients of electronic notice.

I hereby certify that I have e-mailed the document to the following non-CM/ECF participants, who have agreed to e-mail service:

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