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SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Attorneys for *Qui Tam* Plaintiff

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
EUREKA DIVISION**

UNITED STATES OF AMERICA,)	CASE NO. 1:17-cv-05090-RMI
<i>ex rel.</i> Doe,)	
)	FIRST AMENDED COMPLAINT FOR
Plaintiffs,)	VIOLATION OF THE FEDERAL
)	FALSE CLAIMS ACT
vs.)	[31 U.S.C. § 3729 <i>et seq.</i>]
)	DEMAND FOR JURY TRIAL
Humboldt County,)	
)	FILED UNDER SEAL PURSUANT
)	TO 31 U.S.C. §§ 3730(b)(2) and (3)]
Defendant.)	

Qui Tam Plaintiff (relator) (using the pseudonym “Doe”) for the United States and for the relator, pursuant to Fed R. Civ. Proc. 15(a)(1), amends the complaint as a matter of course, as follows:

INTRODUCTION

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4 1. If pigs could fly, Humboldt County ("County") could perhaps argue
5 that its lease of four million square feet of airport property for agricultural
6 purposes, including a pig farm, at unreasonable rates far below fair market value
7 served an aeronautical purpose. But pigs don't fly and the County's grossly
8 undervalued leases of valuable airport property, in addition to its pervasive
9 squandering of airport assets, has starved Humboldt County's public airports of
10 adequate resources in violation of the self-sustaining and revenue diversion
11 assurances it has made to the Federal Aviation Administration (FAA), assurances
12 given in return for receiving millions in federal grant funds.

13
14
15 2. On behalf of the United States, Doe brings this action to recover
16
17 treble damages and civil penalties from false claims submitted by Humboldt
18 County to the FAA for grants under the federal government's Airport
19 Improvement Program (AIP). Over the last decade, Humboldt County has
20 submitted at least 30 airport improvement grant applications and has received
21 more than \$20 million in grants from the United States Government by knowingly
22 and falsely assuring the FAA that it was in compliance with and would abide by
23 the FAA's Revenue Use Policy. See 64 Fed Reg. 7696, February 16, 1999
24
25 (*Policies and Procedures Concerning the Use of Airport Revenue*). Humboldt
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1 County's mandatory compliance with the FAA's revenue use policy and revenue
2 diversion restrictions, in addition to providing written assurance of such
3 compliance, was and is a material condition of Humboldt County's receipt of AIP
4 grant funds.
5

6 3. By knowingly submitting false airport improvement grant
7 applications and failing to comply with its revenue diversion assurances,
8 Humboldt County has violated the False Claims Act ("FCA"), 31 U.S.C. § 3729,
9 *et seq.*
10

11 4. Beginning before 2007, and continuing, Defendant Humboldt County
12 has knowingly submitted, and caused to be submitted, false claims for AIP grant
13 funds and has made draws on such grant funds resulting in millions of dollars in
14 damages to the United States within the statute of limitations applicable to this
15 action.
16
17

18 **JURISDICTION AND VENUE**

19 5. The Court has subject matter jurisdiction to entertain this action
20 under 28 U.S.C. §§ 1331 and 1345 and 31 U.S.C. § 3732. The Court may
21 exercise personal jurisdiction over the defendant pursuant to 31 U.S.C. § 3732(a).
22

23 6. Venue is proper in the Northern District of California under 31
24 U.S.C. § 3732 and 28 U.S.C. §§ 1391(b) and (c) because the defendant is located
25 in this District and all of the claims and events giving rise to this action occurred
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1 in this District.

2 **INTRA-DISTRICT ASSIGNMENT**

3
4 7. This action arises in Humboldt County and should be assigned to the
5 Eureka Division.

6 **PARTIES**

7
8 8. *Qui tam* plaintiff (relator) Doe is a citizen and resident of the United
9 States. Prior to any public disclosure as defined under 31 U.S.C. §3730(e)(4)(a),
10 Doe has voluntarily disclosed to the Government information on which the
11 allegations or transactions in this amended complaint are based. “Doe” is a
12 pseudonym for the relator. The relator has a reasonable fear of severe retaliation
13 for bringing this complaint, is particularly vulnerable to any such retaliation and
14 believes that it is necessary to use a fictitious name to prevent such injury or
15 harassment. Additionally, because the plaintiff/real party in interest is the United
16 States, which is named, and the defendant is a public entity and not a private
17 entity or person, the relator’s anonymity should cause no prejudice at the
18 pleadings stage of this case and subsequent proceedings may be structured to
19 mitigate any such prejudice, including the issuance of protective orders as
20 necessary.
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25 9. Defendant Humboldt County (“County”) is a political subdivision
26 but not an arm of the State of California. The County possesses its own corporate
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28

1 powers, including the power to sue and be sued, and is responsible for its own
 2 debts, obligations and liabilities. *See gen. Cal. Gov. Code § 1300 et seq.*

3
 4 Humboldt County is a “person” within the meaning of the False Claims Act.

5 10. The County is administered by an elected Board of Supervisors
 6 with county-level executive and legislative powers, including adoption of the
 7 annual County budget. County business and affairs are conducted by eight County
 8 departments, including the Department of Public Works, under which is the
 9 Airport or “Aviation” Division [now Department] previously resided. According
 10 to the Humboldt County website, “The Aviation Department is responsible for
 11 managing 6 County airports in a manner that ensures aeronautical safety, the
 12 safety of the traveling public, continued air service, and complies with federal,
 13 State and/or local aviation rules, regulations and advisories.” See
 14 <http://www.humboldt.gov/1396/Aviation> . The County’s six airports are
 15 Murray Field, Arcata-Eureka (ACV), Dinsmore, Rohnerville, Garberville and
 16 Kneeland.
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21 THE FALSE CLAIMS ACT

22 11. The FCA provides, in pertinent part, that a person who:

23 (a)(1)(A) knowingly presents, or causes to be presented, a false
 24 or fraudulent claim for payment or approval;
 25

26 (a)(1)(B) knowingly makes, uses, or causes to be made
 27
 28

1 or used, a false record or statement material to a false or
2 fraudulent claim;
3

4 . . . is liable to the United States Government for a civil penalty of
5 not less than \$5,000 and not more than \$10,000, as adjusted by the
6 Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C.
7 2461 note; Public Law 104-410), plus 3 times the amount of damages
8 which the Government sustains. . . .
9
10

11
12 31 U.S.C. § 3729¹ For purposes of the False Claims Act,
13

14 the term “knowing” and “knowingly” mean that a
15

16
17 ¹ The FCA was amended pursuant to Public Law 111-21, the Fraud
18 Enforcement and Recovery Act of 2009 (“FERA”), enacted May 20, 2009. Given
19 the nature of the claims at issue, Sections 3729(a)(1) and (2) of the prior statute,
20 and Section 3729(a)(1)(A) and (B) of the revised statute are all applicable here.
21
22 Sections 3729(a)(1) and (2) apply to conduct that occurred before FERA was
23 enacted, and sections 3729(a)(1)(A) and (B) apply to conduct after FERA was
24 enacted. Section 3729(a)(1)(B) is applicable to this case by virtue of Section 4(f)
25 of FERA, which makes the new changes to that provision applicable to all claims
26 for payment pending on or after June 7, 2008.
27
28

1 person, with respect to information (1) has actual
2 knowledge of the information; (2) acts in deliberate
3 ignorance of the truth or falsity of the information; or (3)
4 acts in reckless disregard of the truth or falsity of the
5 information; and require no proof of specific intent to
6 defraud.
7

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9 31 U.S.C. § 3729(b).

10
11 **THE AIRPORT IMPROVEMENT PROGRAM**

12 12. Administered by the FAA under the direction of the Secretary of
13 Transportation, the Airport Improvement Program (AIP) provides grants of
14 federal funds to airports for the planning and development of public-use airports
15 that are included in the National Plan of Integrated Airport Systems (NPIAS).
16 Funds obligated for the AIP are drawn from the federal Airport and Airway Trust
17 Fund which is supported by user fees, fuel taxes, and other similar revenue
18 sources. Eligible projects for these funds include airfield and airport capital
19 improvements and rehabilitation, and related planning, surveying and design.
20 Each of Humboldt County's six airports has received AIP project funds as a result
21 of AIP grant applications submitted by the County to the FAA.
22

23 13. Pursuant to 49 U.S.C. § 47107, subsection (b), applications for
24 AIP grant funds may only be approved if the applicant (sponsor) provides
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1 satisfactory written assurances that the revenues generated by the public airport
2 will be expended for the capital or operating costs of A) the airport; B) the local
3 airport system; or C) other local facilities owned or operated by the airport owner
4 or operator and directly and substantially related to the air transportation of
5 passengers or property. Additionally, pursuant to subsection (a)(13), applications
6 must also include assurances from the sponsor that the airport operator will
7 maintain a schedule of charges for use of facilities and services at the airport that
8 will make the airport as self-sustaining as possible.
9

10
11 14. Pursuant to 49 U.S.C. § 47107(k), the Secretary of Transportation
12 (Secretary) has established policies and procedures to assure the prompt and
13 effective enforcement of subsections (a)(13) and (b) of § 47107 and the sponsor's
14 corresponding grant assurances. These regulatory policies and procedures
15 prohibit the diversion of airport revenues through direct payments or indirect
16 payments (other than payments reflecting the value of services and facilities
17 provided to the airport) and the use of airport revenue for purposes unrelated to
18 airport or airport systems. They further require the owners and operators of
19 airports, when entering into new or revised agreements or otherwise establishing
20 rates, charges and fees, to have undertaken reasonable efforts to make their
21 particular airports as self-sustaining as possible under the circumstances existing
22 at the airports. The FAA has included the grant assurances required by 49 U.S.C.
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1 § 47107 in form grant applications for use by applicant sponsors.

2
3 15. Humboldt County (the sponsor) made the following “assurances,” 24
4 and 25, in each of the grant applications it submitted to the FAA which are the
5 subject of this complaint:
6

7 **C. Sponsor Certification.** The sponsor hereby assures and
8 certifies, with respect to this grant that:
9

10 **24. Fee and Rental Structure.** It will maintain a fee and rental
11 structure for the facilities and services at the airport which will
12 make the airport as self-sustaining as possible under the
13 circumstances existing at the particular airport, taking into
14 account such factors as the volume of traffic and the economy
15 of collection.
16

17
18 **25. Airport Revenues.** All revenues generated by the airport and
19 any local taxes on aviation fuel . . . will be expended by it for
20 the capital or operating costs of the airport; the local airport
21 system; or other local facilities which are owned or operated
22 by the owner or operator of the airport and which are directly
23 and substantially related to the actual transportation of
24 passengers or property; or for noise mitigation purposes on or
25 off the airport.
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1 16. For each and every AIP grant application which is the subject of this
2
3 Complaint, the County certified, under penalty of perjury, on FAA Forms 5100-37
4 or their functional equivalent, by the signature of a duly authorized representative
5 of the County, as the grant sponsor, that the County accepted, ratified and adopted
6 all such assurances, covenants and agreements contained in the AIP grant
7 application and that it agreed to comply with all such assurances in the
8 performance of the grant agreements.
9

10
11 17. Pursuant to 49 U.S.C. § 47107 and the FAA's published Revenue
12 Use Policy at 64 Fed Reg. 7696, the Secretary has issued interpretive manuals and
13 guidance defining the scope and meaning of the grant assurances reflected in
14 grant assurances 24 and 25. One example is FAA Compliance Manual - Order
15 5190.6B (effective September 2009). FAA Compliance and Guidance Manuals
16 repeat the sponsor's obligation to maintain a fee and rental structure for facilities
17 and services which will make the airport as self-sustaining as possible and
18 reaffirm the prohibition on the diversion of airport revenue for purposes other
19 than airport capital or operating costs or the costs of other facilities owned or
20 operated by the sponsor and directly and substantially related to air transportation,
21 and have interpreted these rules to include the following:
22
23
24

- 25 A) Using airport revenue for general economic
26 development is a prohibited use of airport revenue;
27
28

- 1 B) Rental of airport property for non-aeronautical uses
2 must be based on fair market value. Rental of airport
3 property to, or use of airport property by, the sponsor for
4 non-aeronautical purposes at less than fair market value
5 rent is considered a subsidy of local government and is a
6 prohibited use of airport revenue;
7
8
9 C) Using airport property or funds for community activities
10 and purposes - unless such expenditures are directly and
11 substantially related to the operation of the airport - is a
12 prohibited use of airport revenue. A sponsor may make
13 airport property available for community purposes at
14 less than fair market value on a limited basis if the
15 property is used in a way that enhances the community's
16 acceptance of the airport. When the use does not directly
17 support the airport's operations, a sponsor may not
18 provide property at less than fair market value.
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22 D) Rental charges for airport property used for aeronautical
23 purposes must be reasonable, and should reflect the cost
24 of the facilities.
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27 **FACTUAL BACKGROUND**
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18. Between 2005 and 2017, the County (as grant sponsor) submitted the following AIP grant applications to the FAA, each of which included certificates of compliance with assurances 24 and 25, and all other applicable assurances, federal laws and regulations, in accordance with 49 U.S.C. § 47107 and the FAA's published Revenue Use Policy at 64 Fed Reg. 7696, and each of which were thereby approved in the following stated amounts for the stated airport and aeronautical purposes:

Arcata/Eureka Airport (ACV) (Primary)

<u>Fiscal Yr</u>	<u>Grant #</u>	<u>Amount (\$)</u>	<u>Description</u>
2005	29	65,000	Runway Rehabilitation
2006	30	5,140,398	Terminal Expansion
2007	31	1,000,000	Fire/Rescue Vehicle; Improve Runway Safety Area

1	2008	32	740,142	Fire/Rescue Bldg; Improve
2				Runway Safety Area; Rehab
3				Runway Lighting
4				
5				
6	2008	33	237,500	Environmental Study
7				
8				
9	2009	34	8,759,562	Improve Runway Safety Areas
10				
11	2009	35	2,369,274	Improve Runway Safety Areas
12				
13				
14	2009	36	100,000	Wildlife Hazard Assessment
15				
16	2010	37	946,775	Improve Runway Safety Area
17				
18				
19	2010	38	387,737	Improve Runway Safety Area
20				
21	2011	39	1,895,326	Improve Runway Safety Area
22				
23				
24	2013	40	2,148,784	Fire/Rescue Bldg.
25				
26				
27				
28				

2014	41	282,312	Improve Runway Safety Area
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2014	42	361,985	Fire/Rescue Bldg
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2014	43	75,550	Update Master Plan Study
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2015	44	80,074	Miscellaneous Study
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2015	45	51,706	Miscellaneous Study
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2017	46	5,966,233	Fire/Rescue Bldg
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Subtotal:		30,688,388	
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Dinsmore Airport (General Aviation)

<u>Fiscal Yr</u>	<u>Grant #</u>	<u>Amount (\$)</u>	<u>Description</u>
2005	4	33,156	Improve Airport Drainage
2006	5	42,750	Rehab. Apron & Runway
2008	6	<u>425,000</u>	Rehab. Apron & Runway

Subtotal: 500,906

Murray Field (General Aviation)

<u>Fiscal Yr</u>	<u>Grant #</u>	<u>Amount (\$)</u>	<u>Description</u>
2005	6	33,365	Perimeter Fencing
2005	7	250,000	Environmental Study
2010	8	150,812	Perimeter Fencing
2012	9	551,855	Perimeter Fencing
2014	10	75,000	Update Master Plan Study
2015	11	41,342	Miscellaneous Study

2015 12 107,760 Update Miscellaneous Study

2016 13 137,840 Rehab. Runway & Taxiway

Subtotal: 1,344,974

Rohnerville (General Aviation)

<u>Fiscal Yr</u>	<u>Grant #</u>	<u>Amount (\$)</u>	<u>Description</u>
2005	5	70,000	Rehab. Runway & Lighting
2007	6	250,000	Rehab. Runway/Taxiway Lighting
2007	6	250,000	Rehab. Runway/Taxiway Lighting
2008	7	87,500	Rehab. Runway Lighting
2008	9	61,426	Rehab. Runway/Taxiway Lighting
2009	10	68,391	Weather Reporting Equipment
2010	11	<u>275,690</u>	Weather Reporting Equipment

Subtotal: 862,407

Garberville (General Aviation)

<u>Fiscal Yr</u>	<u>Grant #</u>	<u>Amount (\$)</u>	<u>Description</u>
2006	4	25,000	Perimeter Fencing
2008	5	234,000	Perimeter Fencing
2008	6	88,943	Rehab./Expand Apron
2009	7	93,785	Weather Reporting Equipment
2010	8	217,554	Weather Reporting Equipment
2015	9	161,753	Rehabilitate Runway
2016	10	<u>2,143,598</u>	Construct Apron & Taxiway, Rehab. Runway & Taxiway

Subtotal: 2,964,633

Kneeland (General Aviation)

Fiscal Yr	Grant #	Amount (\$)	Description
2005	4	190,520	Rehab. Apron & Runway
2006	5	<u>237,500</u>	Environmental Study
	Subtotal:	<u>428,020</u>	

TOTAL 36,709,328

19. The County's repeated assurances reflected in each of the grant applications and approved grants that it was in compliance with the mandatory assurances and would comply with such assurances, including assurances 24 and 25, and all other applicable laws and regulations were false. In fact, all of the County's AIP grant applications submitted to the FAA over the course of the last decade omitted information, and thereby concealed, that it was not in compliance with the mandatory assurances and made false representations that it would comply with such assurances while knowing that it was not complying and would not be complying.

20. The County knew that its assurances were false because it was leasing, intended to continue leasing, and continued to lease airport property for non-aeronautical uses at less than fair market value to non-aeronautical divisions and agencies of the County itself, for uses that have no relationship to enhancing the community's acceptance of the County's airports and do not directly support the airport's operations, as follows:

A) Sheriff's Department Pig Farm, Pasture and Hay Field: Since at least January 17, 2006, the County has leased nearly 4 million square feet of airport property to the County Sheriff's Department for agricultural purposes associated, in part, with the Sheriff's Work Alternative Program (SWAP). This includes offender participation in raising hogs sold as meat or fed to inmates in the County jail, with little or no regular wages paid to the SWAP participants. The lease rates the County has charged, and continues to charge, the Sheriff's Department has ranged between \$0.0002 and \$0.025 per square foot per year, far below the fair market value rate of approximately \$0.35 per square foot per year. This has resulted in a loss of revenue allocable to the County's Airport Division of approximately \$1.3 million annually. Additionally, no monies have been paid to the Airport Division from the proceeds of the sale of SWAP raised hogs or other agricultural products produced on the leased airport properties.²

² The lease agreements between the Sheriff's Department and the Aviation

1 B) Animal Control Shelter: Since at least 2004, the County
2 has leased approximately 142,000 square feet of airport property to the County
3 Sheriff's Department Animal Control Division for animal control purposes
4 unrelated to aeronautical use and having no relationship to the enhancement of the
5 community's acceptance of the County's airports. The lease rates that the County
6 has charged the Animal Control Division have ranged between \$0.025 and \$0.032
7 per square foot per year, far below the fair market value rate of approximately
8 \$0.35 per square foot per year. This has resulted in a loss of revenue allocable to
9 the County's Airport Division of approximately \$45,000 annually. Additionally,
10 no monies have been paid to the Airport Division from revenue earned by the
11 Animal Control Division on airport property from the sale and adoption of
12 _____
13 Division allow the Sheriff's Department the option to pay its minimal rent with
14 hours of labor performed by SWAP participants at the Rohnerville Airport in lieu
15 of monetary rent, even though the SWAP participants are paid little or no regular
16 wages. The list of suggested work includes weeding along roads and fences,
17 mowing around the Pilot's Lounge and cleaning and washing the exterior
18 window's of the Pilot's Lounge. However, such maintenance services at
19 Rohnerville are already provided by Cal Fire and Airport Division maintenance
20 personnel. There is no indication that SWAP participants are performing these
21 services.
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1 domestic animals, boarding and impounding fees, veterinary services and
2 administrative costs, fines, penalties and license fees.

3
4 C) District Attorney Storage: Since at least 2011, the County has
5 leased approximately 2,000 square feet of airport property to the County District
6 Attorney (DA) for storage of equipment and vehicles, purposes unrelated to
7 aeronautical use and having no relationship to the enhancement of the
8 community's acceptance of the County's airports. The lease rates that the County
9 has charged the DA have ranged between \$0.10 and \$0.105 per square foot per
10 year, far below the current fair market value rate of approximately \$0.79 per
11 square foot per year.³ This has resulted in a loss of revenue allocable to the
12 County's Airport Division of approximately \$16,433 annually.

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16 D) Public Works - Road Maintenance: Since at least 2011, the
17 County has leased approximately 950,345 square feet of airport property to the
18 County Public Works Department - Road Division for County road maintenance
19 activities, including road barns at ACV, Rohnerville and Garberville and storage
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21

22
23 ³ The same space in the "airfreight" building at ACV had previously been
24 leased by Bigfoot Transportation for air freight, an aeronautical purpose, at twice
25 the rate the DA is paying. Adjoining comparable space is currently being leased by
26 the FAA for aeronautical purposes at seven times the DA's lease rate.
27
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1 at Murray Field, for purposes mostly, if not entirely, unrelated to aeronautical use
2 and having no relationship to the enhancement of the community's acceptance of
3 the County's airports. The County has charged the County Road Division lease
4 rates of approximately \$0.025 to \$0.026 per square foot per year, far below the
5 fair market value rate of approximately \$0.35 per square foot per year. This has
6 resulted in a loss of revenue allocable to the County's Airport Division of
7
8 approximately \$307,597 annually.
9

10 E) Public Works - Road Division Motor Pool: Since at least
11
12 2011, the County has leased approximately 1200 square feet of airport property at
13 ACV to the County Public Works Department - Road Division Motor Pool for the
14 storage of vehicles, for purposes mostly, if not entirely, unrelated to aeronautical
15 use and having no relationship to the enhancement of the community's acceptance
16 of the County's airports. The County has charged the County Road Division lease
17 rates of between \$0.10 and \$0.105 per square foot per month, far below the fair
18 market value rate of approximately \$0.79 per square foot per month. This has
19 resulted in a loss of revenue allocable to the County's Airport Division of
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21 approximately \$9,863 annually.
22
23

24 F) Public Works - Environmental Services: Since at least 2012,
25 the County has leased 4,107 square feet of Building 24 at ACV to the County
26 Environmental Services Division of the Public Works Department at rates of
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1 between \$0.087 and \$0.10 per square foot per month, for purposes mostly
2 unrelated to aeronautical use and having little, if any, relationship to the
3 enhancement of the community's acceptance of the County's airports. These rates
4 are far below the fair market value of lease rates for Building 24 which is
5 approximately \$0.79 per square foot per month, resulting in a loss of revenue
6 allocable to the County's Airport Division of approximately \$34,658 annually.
7
8 Additionally, since at least 2012, the County has leased approximately 7000
9 square feet of airport property at ACV to the Environmental Services Division for
10 a parking and storage area directly north of Building 24, purposes mostly, if not
11 entirely, unrelated to aeronautical use and having little, if any, relationship to the
12 enhancement of the community's acceptance of the County's airports, and has
13 charged the Environmental Services Division lease rates of between \$0.07 and
14 \$0.25 per square foot per month, far below the fair market value rate of
15 approximately \$0.79 per square foot per month. This has resulted in a loss of
16 revenue allocable to the County's Airport Division of approximately \$64,934
17 annually.
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22 21. The County further knew that its assurances were false because it
23 was renting, intended to keep renting and continued to rent airport property for
24 non-aeronautical and aeronautical uses at less than fair market value or at less
25 than reasonable rates to private entities for uses that have no relationship to
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1 enhancing the community's acceptance of the County's airports and do not
2 directly support the airport's operations, resulting in an annual loss of revenue
3 allocable to the County's Airport Division of approximately \$33,000, as follows:
4

5 A) Humboldt Trap and Skeet Club: Since at least 2011, the
6 County has leased land at ACV to the Humboldt Trap and Skeet Club at the rate
7 of \$0.01 per square foot per year for purposes unrelated to aeronautical use, far
8 below the fair market value of lease rates for such land at ACV which is at least
9 approximately \$.35 per square foot per year. Additionally, no monies have been
10 paid to the Airport Division from revenue earned by the Humboldt Trap and Skeet
11 Club from its sale of memberships, traps, stands, skeets, bunkers, sporting clays
12 and shot-gun shells.
13
14
15

16 B) Murphy's Markets: Since at least 2011, the County has leased
17 building space at ACV to Murphy's Markets at the rate of \$0.07 per square foot
18 per month for purposes unrelated to aeronautical use and having little, if any,
19 relationship to the enhancement of the community's acceptance of the County's
20 airports. The rate charged is far below the fair market value of lease rates for
21 building space at ACV which range from approximately \$.70 per square foot per
22 month for building storage space up to \$3.32 per square foot per month for
23 premium terminal space.
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1 C) Mercer, Fraser & Company: Between 2008 and 2015, the
 2 County leased the Kodiak Hanger at ACV to Security National Servicing
 3 Company at the rate of \$0.79 per square foot annually for 13,515 square feet of
 4 hangar space and \$0.35 per square foot annually for 45,210 square feet of
 5 surrounding ramp, landscaping, parking and tie-down. These rates are
 6 unreasonably low and below cost for such facilities. In 2015, the County
 7 approved the assignment of the hangar lease at the same unreasonably low rental
 8 rates to Mercer, Fraser & Company (MFC), which included a commitment by
 9 MFC to repair the hangar roof. MFC is a regular roads construction and
 10 maintenance contractor for the County. ⁴ Despite such unreasonably low rental
 11 rates, after assuming the lease in 2015, MFC paid no rent until January 23, 2018,
 12 and paid none of the late fees that it owed. ⁵

17
 18 ⁴ Justin Zabel, MFC's managing officer and a principal owner, is a member
 19 of the County's Aviation Advisory Committee and is believed to have close ties to
 20 the County Director of Public Works (DPW), the County's Chief Administrative
 21 Officer (CAO) and current and former members of the County Board of
 22 Supervisors *See, infra*, at ¶ 22, fn. 6.

23
 24 ⁵ Zabel and MFC profited from the leased airport space, while paying no
 25 rent. MFC has subleased a portion of the premises, and Zabel has operated a
 26 commercial air service, "ACV Group, LLC." Zabel's commercial air service has
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 28

1 22. Until its January 23, 2018, payment of \$75,917 (principal less late
2 fees), MFC was nearly \$100,000 in arrears and finally made its partial payment
3 after an ACV employee alerted the FAA. The FAA responded in writing that the
4 County's non-collection of past rents would be in violation of Grant Assurance 24
5 and that collection from MFC should occur "ASAP." This was not the first
6 attempt, however, to get MFC to pay. For more than a year, ACV employees had
7 persistently pressed the DPW for his assistance or direction in getting MFC to pay
8 its rent, including suggestions that the MFC account be referred to counsel or
9 revenue recovery (collections). Despite repeated assurances from the DPW that he
10 alone would directly handle the matter with Zabel, there is no indication that the
11 DPW did anything other than repeatedly stall and no payment was made by MFC
12 until the FAA complaint was made. Essentially, until its recent payment, MFC
13 had been occupying and using valuable airport property for free.⁶

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20 kept a Cessna 414A and a Pilatus PC-12/45, with a combined value well in excess
21 of \$2 million, on the leased airport space.

22 ⁶ MFC's partial rent payment came only days after Zabel is believed to have
23 given a free airplane ride (on or about January 18, 2018) to (now former)
24 Supervisor Ryan Sundberg and the CAO. The flight took them from ACV to
25 Sacramento so they could all attend a social event hosted by Supervisor Rex Bohn.
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CONCEALMENT

23. In March 2017, in response to a recommendation from a majority of the members of the County Airport Advisory Committee (a recommendation that was opposed by Zabel), the County Board of Supervisors hired Volaire Aviation Consulting to conduct an airport governance and sustainability study. In May 2017, Volaire interviewed County personnel, elected officials and airport property tenants. Based on these interviews, Volaire obtained information about the County's pervasive revenue diversion and rental structure (assurances 24 and 25) violations, which are starving the airport of resources. Volaire included this information in its draft "Aviation Division Financial Review" ("original May report") which it delivered on or about June 1, 2017 to the CAO and the DPW. Volaire's original May report has never been released to the public and, upon information and belief, the CAO and DPW have concealed it from the County Board of Supervisors and the public.

MFC was then in the midst of a controversial application process, with community resistance, to obtain approval from the County Board of Supervisors to re-zone riverbank property that it owns alongside the environmentally sensitive Mad River to heavy industrial use so it could construct a cannabis extraction plant.

24. Upon reviewing the original May report, the CAO and DPW instructed Volaire to revise the original May report by changing wording that implicated the County in violations of the County's grant assurances and the FAA's revenue diversion, sustainability and fee and rental structure policies and wording which otherwise encouraged the separation of the County Airport Division from the County Department of Public Works. A revised report was then issued by Volaire in June 2017. The "June report" specifically changed and deleted information and conclusions in the original May report detailing the County's leasing of airport property at unreasonable and below fair market value rates and the charging of services provided by Public Works to airport accounts. After further editing, the "Final" Volaire report was formally presented to the County Board of Supervisors' on December 19, 2017. The changes and deletions between the original May report and the Final report presented to the County Board of Supervisors largely obscured the sizeable dollar amount of lost Aviation Division revenue caused by the lease of airport property to non-aviation County agencies for non-aeronautical purposes at far below fair market value.⁷ Examples include

⁷ Either intentionally or inadvertently, the following quote was left in the margin of the financial portion of the Final Volaire report, even though it had been edited out of the main text as it had appeared in the original May report: "One of

1 the following:

2 A) Original May report: “Based on current standard airport lease
3 rates for both building and land leases, the airport system is giving the combined
4 County agencies a discount of more than \$1.8 million per year.”

5 Final report: wording changed in entirety to say: “Humboldt
6 County agencies receive large discounts over standard airport system lease pricing.
7 At the very least, the airport system should be credited, in its annual budget, with a
8 line-item for the savings it is currently providing other County agencies, who
9 would likely pay more for similar land on the open market.”

10 B) Original May report: “If the Public Works Department paid the
11 airport system for the buildings and land it uses, based on standard County airport
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18 the beneficiaries of the lower lease rates is the County itself – but the County
19 ***deprives*** The Airport System of revenue with favorable leases of airport property.”

20 (Emphasis added.) The edited version in the main text of the Final report
21 submitted to the Board of Supervisors states, “Many tenants’ leases remain from
22 agreements that were signed a number of years ago, with much lower rates than
23 current. One of the beneficiaries of lower lease rates is the County, itself which
24 has favorable leases on airport property.” (sic)

1 lease rates as of the writing of this document, it would pay a total of almost
2 \$450,000 per year in lease charges.” “This amount represents a payment increase
3 of more than \$417,000 per year over what Public Works pays the airport system
4 today.”
5

6 Final report: statement deleted.
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8 C) Original May report: “Similarly, the District Attorney’ office
9 would see an increase in its lease cost of more than \$16,400 per year if it paid the
10 airport system based on today’ standard rates.” “Animal Control would see its
11 annual payment to the airport system increase from \$4,500 to almost \$69,000. The
12 net increase in revenue to the airport system from standard lease rates for these
13 County agencies would be almost \$62,000 per year.”
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16 Final report: statement deleted.
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18 D) Original May report: “The Sheriff’s Office receives the largest
19 discount of any County agency for the lease of airport system property, totaling
20 almost \$1.4 million per year.” “The Sheriff does, however, provide maintenance
21 services to Rohnerville Airport in exchange for its low lease rates; it is unclear if
22 the County would have the appetite to raise the Sheriff’ Office lease rates to the
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1 standard level.”⁸

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3 Final report: “The Humboldt County Sheriff’s Office leases
4 more than 4-million square feet of land from the airport system at Rohnerville
5 Airport, with the lowest square footage rates of any County agency. In exchange
6 for low lease rates, the Sheriff’s inmate work program is charged with providing
7 maintenance services at Rohnerville Airport.”
8

9 E) Original May report: “Assuming the lease rates charged to the
10 Sheriff’s Office go unchanged due to the exchange of services, but all other
11 County agencies begin paying standard rates for the airport system land and
12 buildings they occupy, the system would gain \$478,700 per year in lease
13 payments. Previous analysis for this report showed that the airport system pays the
14 Public Works Department at actual cost (not discounted) for services it uses. It
15 would be philosophically defensible for the Public Works Department to pay the
16 airports system standard rates for the land and buildings it uses on its airports.
17 Moreover, a half a million dollars per year in additional revenue would be a huge
18 boost to the airport system budget.”
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23 ⁸ The statement that the Sheriff provided maintenance services at the
24 Rohnerville airport appears to have been based on gratuitous language in the lease
25 agreement, but no such maintenance is believed to have been provided. See, *supra*,
26 fn. 4.
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1 Final report: statement deleted.

2 F) Original May report: “This analysis shows the airport system
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4 paid more than \$515,000 to Public Works in fiscal year 2016.” “Almost a third of
5 this amount came from the operational budget, while 71% came from charges to
6 airport grants.”

7 Final report: statement deleted.

8 G) Original May report: “[T]he lack of staff has caused the
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10 [airport] system to lean on its parent department, Public Works, to cover a
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12 *significant amount of* work that would otherwise be done by airport system
13 employees. The net effect of this division of labor is that the airport system pays
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15 *more than half-million* dollars a year to Public Works to cover *staff time*.”

16 Final report: wording changed to say: “[T]he lack of staff has
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18 caused the [airport] system to lean on its parent department, Public Works, to
19 cover *some* work that would otherwise be done by airport system employees. The
20 net effect of this division of labor is that the airport system pays *roughly a quarter-*
21 *million* dollars a year to Public works to cover *necessary activities*.”

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23 25. While the final Volaire report continued to acknowledge (albeit less-
24
25 exuberantly) that the lack of sufficient Airport Division staffing was an important
26 issue, the report incorrectly stated that ACV’s Airport Service Workers (ASW),
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1 who are primarily responsible for firefighting duties, could still satisfy the FAA
2 Part 139 emergency response time rules, even though the ASWs were also being
3 used to perform custodial duties, including cleaning the bathrooms in the terminal
4 because of the lack of personnel. The final report noted that even though the
5 ASW's are sometimes cleaning toilets when planes take off and land, "[they] say
6 they can still meet that minimum" of responding within 120-seconds of an accident
7 to the midpoint of the farthest runway after first running to the firehouse to collect
8 firefighting equipment. In fact, the ASWs did not tell Volaire that they could meet
9 the minimum response time if an accident occurred while they were cleaning the
10 toilets. Instead, Jack Penning, a Volaire consultant and the author of the Volaire
11 report, has indicated that he was instructed by the DPW to include the statement
12 that the ASWs were able to meet the minimum response time under those
13 circumstances.
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18 26. In addition to the removal of specific dollar amounts from Volaire's
19 final report, compared to the May original, the final Volaire report submitted to
20 the Board of supervisors included a more generalized level of detail of Airport
21 Division Revenues and Expenditures which obscured numerous expense transfers
22 for non-discounted work that Public Works charged to the Aviation Division for
23 work that could otherwise have been done more efficiently by airport system
24 employees. Additionally, the generalized level of detail obscured the non-
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1 discounted over-priced amount Public Works has been charging the Aviation
2 Division for the use of vehicles (including a fire-engine purchased with AIP funds
3 for airport use) that had previously been owned and maintained by the Airport
4 Division before being transferred to Public Works by the DPW, an action
5 approved by the County Board of Supervisors. Although Penning had detailed
6 financial information, more generalized and obscure data provided by the DPW
7 was instead used in the final Volaire report. The DPW who told Penning to only
8 use the financial information that the DPW provided.
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12 27. The final Volaire report presented to the County Board of
13 Supervisors on December 19, 2017 also included a Governance Analysis. The
14 Governance report recommended that the County's airport system be severed from
15 the Department of Public Works and made its own separate County Department
16 with the appointment of an airport manager. In response, the County Board of
17 Supervisors directed the CAO to create an airports department and airports
18 director position and to work with Public Works on an immediate interim position
19 for an airports manager.
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24 **CLAIM FOR VIOLATION OF THE FALSE CLAIMS ACT**

25 **[Fraudulent Inducement]**

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1 28. Plaintiffs incorporate by reference and re-allege paragraphs 1-27 as if
2 fully set forth herein.

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4 29. Since at least 2006, the defendant has knowingly submitted and
5 caused to be submitted false AIP grant applications to the United States. The grant
6 applications were false because they contained false certified assurances. The
7 defendant included the false certified assurances in each and every AIP grant
8 application for the purpose of getting its AIP grant applications approved and paid
9 by the government because the defendant knew that such assurances, including
10 assurances 24 and 25, were a material condition for government approval of such
11 grant applications and the funding of such grants.

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15 30. The defendant had actual or constructive knowledge that the United
16 States Government had previously prosecuted the recipient of AIP grant funds
17 under the False Claims Act for knowingly submitting falsely certified grant
18 assurances and that FAA regulations provided for the imposition of
19 damages and penalties in response to the submission of false AIP grant assurances,
20 including assurances 24 and 25. The defendant further knew that its certified
21 assurances in each and every AIP grant application it submitted to the United
22 States since at least 2006 were false because it knew that it was violating the
23 revenue diversion/ sustainability and fee and rental structure assurances at the time
24 it submitted the grant applications, it knew that it would continue to do so, it
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1 knowingly continued to do so, and it knowingly concealed from the FAA and
2 knowingly omitted telling the FAA that it was engaged in ongoing violations of
3 grant assurances 24 and 25 and that it would continue to violate the grant
4 assurances. If the defendant had been truthful to the FAA about its non-
5 compliance with AIP grant assurances 24 and 25, the defendant would have been
6 disqualified from receiving the AIP grants. Since at least 2006, the defendant is
7 believed to have made numerous AIP grant draw-downs from grant funds awarded
8 the defendant as a result of its falsely certified AIP grant applications.
9

11 31. The United States relied on the defendant's falsely certified
12 assurances and the defendant's failure to disclose its non-compliance and was
13 induced to award the defendant each and every one of the AIP grant applications
14 referenced herein as a result of the defendant's false assurances. The United States
15 would not have awarded the grants if the defendant had told the Government the
16 truth.
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18 32. By virtue of the defendant's acts in knowingly submitting to the
19 United States false AIP grant applications containing false assurances and by
20 knowingly making numerous draw-downs of AIP grant funds obtained as a result
21 of its false AIP grant applications, the defendant has knowingly made, used or
22 caused to be made or used, false records or statements to get false claims for
23 payment paid or approved in violation of 31 U.S.C. § 3729(a)(2) and (a)(1)(B) and
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1 has knowingly made or caused to be made false claims for payment in violation of
2 31 U.S.C. § 3729(a)(1) and (a)(1)(A).

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4
5 **PRAYER FOR RELIEF**

6
7 WHEREFORE, *qui tam* plaintiff prays for relief as follows:

8 1. For three times the dollar amount shown to have been wrongfully
9 paid by the United States and for all other damages allowed under law;
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11 2. For maximum civil penalties for all false records, statements,
12 certifications and claims submitted to the United States subject to the limitations
13 of the Excessive Fines and Penalties Clause of the Eighth Amendment to United
14 States Constitution;
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16 3. For the maximum statutory *qui tam* share of the recovery obtained for
17 the United States;
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19 4. For attorney's fees, costs and reasonable expenses; and
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21 5. For such other and further relief as the court deems just and proper.
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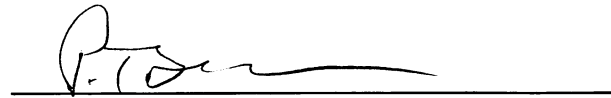
JURY DEMAND

Plaintiffs request trial by jury.

Dated: May 31, 2019

Respectfully submitted,

WARREN ■ BENSON Law Group

A handwritten signature in black ink, appearing to read "P. Benson", is written over a horizontal line.

Phillip E. Benson

Attorney for *Qui Tam* Plaintiff

(Identified under the pseudonym "Doe")