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**UNDER
SEAL**

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

UNITED STATES OF AMERICA,
ex rel., JOHN DOE,

Case No.: 3:13-cv-01306-BR

Plaintiff-Relator,

**UNITED STATES' COMPLAINT-IN-
INTERVENTION**

v.

OREGON HEALTH & SCIENCE
UNIVERSITY,

**[FILED UNDER SEAL PURSUANT
TO THE FALSE CLAIMS ACT, 31
U.S.C. §§ 3730(b)(2) AND (3)]**

Defendant.

The United States of America (the "Government"), by the United States Attorney for the District of Oregon, alleges for its Complaint-In-Intervention as follows:

PRELIMINARY STATEMENT

1. The Government brings this Complaint-In-Intervention seeking damages and penalties against Oregon Health & Science University ("OHSU") under the False Claims Act,

31 U.S.C. §§ 3729 *et seq.* (the “FCA”), and, in the alternative, under the common law for payment under mistake of fact and unjust enrichment.

2. On or about July 13, 2013, the Relator initiated this action on behalf of the Government by filing a *qui tam* complaint under seal. The complaint asserted that OHSU presented false claims to the United States as set forth in paragraph 5 below.

3. On or about July 2014, the United States disclosed to OHSU the existence of an FCA *qui tam* complaint and a summary of the allegations.

4. On or about October 18, 2016, the United States, acting by and through the United States Attorney’s Office, filed a notice of its election to intervene in this action pursuant to 31 U.S.C. § 3730(b)(2) and (b)(4).

5. OHSU violated the FCA through the following schemes:

a. OHSU falsely claimed and stated that federal grants for OHSU’s Vaccine & Gene Therapy Institute (“VGTI”) were entitled to the higher Facilities and Administrative Rates (“F&A rates”) applicable to Oregon National Primate Research Center (“ONPRC”) grants, instead of the lower on-campus research F&A rate that OHSU had agreed to with the Department of Health and Human Services’ Cost Allocation Services (“CAS”) (formerly known as the Division of Cost Allocation). OHSU’s false claims and statements resulted in the Government paying OHSU more money in reimbursable indirect costs than OHSU was entitled to if the correct F&A rates had been applied to the at-issue VGTI grants.

b. OHSU falsely claimed and stated that costs for building space used by the VGTI were part of the ONPRC’s costs. OHSU’s false claims and statements resulted in the Government paying OHSU for costs that are outside of the scope of the federally funded ONPRC core grant.

c. OHSU falsely charged the ONPRC core federal grant funds an assessment that resulted in the ONPRC paying more F&A costs than allowed, which violated OHSU's negotiated agreement with the CAS and caused the ONPRC to receive less program income.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over the Government's claims under the FCA pursuant to 31 U.S.C. § 3730(a) and 28 U.S.C. §§ 1331 and 1345, and over the Government's common law claims pursuant to 28 U.S.C. § 1345.

7. This Court may exercise personal jurisdiction over OHSU, and venue is proper in this District pursuant to 31 U.S.C. § 3732(a) and 28 U.S.C. § 1391(b) because OHSU is located and transacts business in the District of Oregon.

THE PARTIES

8. Plaintiff is the United States of America. Through the Department of Health and Human Services ("HHS"), the Government awards and administers federal research grants. HHS provides grant funding for medical research performed by academic institutions, including for the grants at issue, through the National Institutes of Health ("NIH"). NIH, through the Office of Research Infrastructure Programs (formerly known as the National Center for Research Resources), Division of Comparative Medicine ("DCM"), has established and is the primary funding source for a national network of National Primate Research Centers ("NPRC").

9. Defendant OHSU is a university, healthcare provider, and research center. OHSU is not a state agency or an arm of the state of Oregon. OHSU is a public corporation located and organized under the laws of the State of Oregon. ORS § 353.020 *et. seq.* OHSU's corporate status delegates authority to a Board of Directors to set policy and manage the

operation of the university. ORS §§ 353.010, 353.020. As a public corporation, OHSU has the authority to (1) hold, control, manage, and construct property; (2) issue bonds to generate revenue; and (3) sue and be sued in its own name. ORS §§ 353.050, 353.340. OHSU is the current host institution for the ONPRC, which is one of the NPRCs funded by NIH.

10. Relator was hired in 1988 as a senior accountant for the Medical Research Foundation, the original host institution for the ONPRC. From 2006 through February 2013, Relator was the Associate Director for Administration at the ONPRC.

STATEMENT OF FACTS

I. National Primate Research Centers and the P51 Core Grant Award

11. The National Primate Research Center (“NPRC”) program is a network of seven research centers throughout the United States that are established and funded by the NIH. The NPRCs are designed to facilitate the effective use of non-human primates by scientists engaged in biomedical research.

12. Each NPRC is affiliated with a host institution. Each NPRC is a distinct organizational and structural component of its host institution, and each NPRC itself contains many components, which each have their own internal organizational charts and reporting structures. In order to add a new component to an NPRC and receive P51 grant funding for that component’s activities, the NPRC and its host institution must receive approval for the new component from the NIH.

13. The NPRCs are funded primarily through a unique NIH grant award known as a P51 grant. The NPRC’s host institution is the recipient of the P51 base grant funds and (1) assumes legal responsibility and accountability for the use and disposition of the funds; (2) is

responsible for the scientific programs conducted at the NPRC; and (3) is responsible for providing access to joint appointments of personnel to encourage cooperative activities between the NPRC and other programs at the host institution.

14. The NIH administers the P51 grants through the CAS. The P51 core grant funds provide the animals, facilities, and other resources needed to enable specialized research using non-human primates. The P51 core grant awards are authorized under Title III, Part A, § 301 of the Public Health Service Act (Public Law 78-410, as amended, 42 U.S.C. § 241) and administered under Public Health Service Grants Policies and Federal Regulations 42 C.F.R. 52 and 45 C.F.R. 74.

15. The P51 base grants are subject to all federal grant policies and procedures, including but not limited to those set forth in the NIH Grants Policy Statement; NPRC Program, DCM Program Guidelines; P51 Program Announcement; and OMB Circular A-21. These policies set forth rules governing the use of P51 grant funding, including restrictions on how the funds may be spent and steps that an institution must follow in order to get approval for funding certain activities.

16. For example, the NPRC Program Guidelines provide that P51 core grants are not intended to fund R-01 type research performed by core scientists. P51 core grants also are restricted to funding NPRC programs that have been approved by the NIH, and P51 grant funds may not be spent on costs for non-approved NPRC programs.

17. By accepting NIH funding, educational institutions agree to comply with all applicable laws, regulations, and policies governing the use of the federal funds, including rules intended to ensure that costs charged to federal grant awards are permissible under established cost allocation principles. As a general matter, educational institutions are only entitled to seek

and receive federal reimbursement for actual costs the institution incurred in support of federally sponsored grant activities.

18. To continue receiving P51 base grant funding, the NPRC's host institution must submit regular grant renewal applications to NIH. The renewal grant applications are required to describe the various individual components of the NPRC, and each of those components are peer reviewed as part of the grant award process to ensure that only approved NPRC components receive P51 grant funds.

19. In addition, as required by the terms and conditions of the P51 base grant, NPRC host institutions must submit an annual Federal Status Report/Federal Financial Report ("FFR") to NIH with year-end accounting of income and expenditures. Pursuant to the 2010 NIH Grants Policy Statement, Section 8.4.1.4.2, grantees must ensure that the information submitted in the FFR is "accurate, complete, and consistent with the grantee's accounting system."

20. By submitting the FFR, the host institution "certifies that the information in the FFR is correct and complete and that all outlays and obligations are for the purposes set forth in grant documents, and represents a claim to the Federal government." The 2010 NIH Grants Policy Statement, Section 8.4.1.4.2, also notes that filing a false claim may result in the imposition of civil or criminal penalties.

21. In addition to annual FFRs, OHSU also submits quarterly FFRs to the NIH showing the drawdowns it has taken on all of the federal grants its programs have been awarded. In those quarterly reports, OHSU certifies that the information contained therein is "true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and intent set forth in the award documents."

II. The Oregon National Primate Research Center (“ONPRC”) and OHSU

22. The ONPRC is a research institution performing research on a variety of non-human primate species for basic and applied studies of human health and disease.

23. The ONPRC was established in 1960. From 1960 to 1998, the Medical Research Foundation of Oregon was the ONPRC’s host institution. In 1998, OHSU became the ONPRC’s host institution.

24. After OHSU became its host institution, the ONPRC converted to OHSU’s Oracle-based financial and general ledger accounting systems. OHSU has unique accounting codes for the ONPRC, using code numbers 43001 through 43999.

25. The ONPRC is located on approximately 160 acres of a 250-acre parcel of land located in Beaverton, Oregon known as the “West Campus.” The ONPRC land was purchased with P51 core grant funds. Because P51 core grant funds were used to purchase the land, there are restrictions on the permitted uses of the land and, as relevant here, NIH must approve those uses.

26. The ONPRC’s Director is Nancy Haigwood. The ONPRC director reports independently to OHSU’s Senior Vice President for Research, Daniel Dorsa. The ONPRC staff report to the ONPRC management, who also approve promotions or salary increases.

27. The ONPRC’s core facilities are supported by the NIH through grants awarded to the ONPRC and its host institution, OHSU. The NIH provides primary funding for the ONPRC through the P51 core grant, which is designated as grant number RR00163. By accepting the P51 grant funds, OHSU agrees to be bound by all of the laws, regulations, and guidelines governing the use of P51 funds. OHSU maintains centralized control of the banking

and business grant management services of the P51 grant and other NIH grants received by the ONPRC, as well as other NIH grants received by other OHSU departments and institutions.

28. To continue receiving P51 grant funding, OHSU and the ONPRC submit grant renewal applications to the NIH. The P51 base grant funding applications submitted by OHSU are required to identify the relevant components of the ONPRC.

29. As is relevant here, OHSU applied for P51 base grant funding in 2003, 2008, and 2013, and was awarded NIH funding based on those grant renewal applications. The P51 base grant funding awarded by the NIH for 2008 through 2013 was \$74.7 million. The P51 base grant funding awarded by the NIH for 2014 through 2016 was \$38.1 million.

III. OHSU's Vaccine and Gene Therapy Institute ("VGTI")

30. The VGTI is an independent OHSU institution that is designed to develop research and teaching programs to respond to infectious disease threats.

31. The VGTI was established at OHSU in March 2001. It is located on OHSU's West Campus in a building known as Building #637. VGTI shared Building #637 with another OHSU institution, the Neurological Science Institute ("NSI"), until 2008, when the NSI was closed.

32. The VGTI also receives federal grant funding through the NIH. OHSU and the VGTI regularly submit grant applications to the NIH to secure funding for the VGTI's research activities. OHSU also maintains a unique accounting code for the VGTI, using code number 46001.

33. The VGTI's director, Jay Nelson, oversees VGTI research activity, including for the grants identified herein. The VGTI director reports independently to OHSU's Senior

Vice President for Research, Daniel Dorsa. The VGTI staff report to the VGTI management, who also approve promotions or salary increases for the VGTI personnel.

34. While the VGTI researchers, known as Principal Investigators, have joint appointments in the ONPRC Division of Pathology and Immunology, the VGTI is not a component of the ONPRC.

35. On March 3, 2010, OHSU submitted a P51 Annual Progress Report to the NIH. In that report, OHSU stated that the VGTI had become “a part of the ONPRC” in July 2009. However, to add the VGTI as a component of the ONPRC, OHSU and the ONPRC would have had to seek and receive approval from the NIH. OHSU did not seek or receive approval from the NIH to make the VGTI part of the ONPRC and did not seek or receive approval to use P51 core grant funds to support the VGTI or the entirety of Building #637’s costs.

36. OHSU’s 2003, 2008, and 2013 P51 grant applications, which were signed by OHSU’s Office of Proposal and Award Management, stated the components of the ONPRC to be funded by the grant as required by the terms of the grant. None of the P51 grant applications OHSU submitted to the NIH included the VGTI as a component of the ONPRC, described the VGTI as part of the ONPRC organizational structure, or sought NIH approval to include the VGTI as a component of the ONPRC. The VGTI was not subject to the P51 grant renewal peer-review process and was not approved by the NIH as a component of the ONPRC.

IV. CAS Facilities and Administrative Cost Reimbursement Process

37. Educational institutions receiving federal grant funding for programs like the ONPRC and the VGTI are permitted to recoup certain costs associated with those programs. OMB Circular No. A-21 (the “Circular”), codified at 2 C.F.R. Part 220 (Cost Principles for Educational Institutions (OMB Circular A-21)), establishes “principles for determining costs

applicable to grants, contracts, and other agreements with educational institutions.” Circular, Preamble ¶ 1. The Circular is “designed to provide that the Federal Government bear its fair share of total costs.” *Id.*

38. The Circular governs, among other things, how educational institutions are reimbursed for direct and indirect costs for federally sponsored research grants such as the P51 base grant. “Direct costs” refer to costs that “can be identified specifically with a particular sponsored project,” such as the salary of a principal investigator or the cost of materials used for a project. Circular, Section B.4. Direct costs are completely reimbursable from grant funds.

39. “Indirect costs,” which are also referred to as “facilities and administrative costs” or “overhead costs” (hereinafter “F&A costs”), refer to costs “that are incurred for common or joint objectives and, therefore, cannot be identified readily and specifically” with work performed on a particular sponsored research project. Circular, Section E.1. The “facilities” component of F&A costs refers to “depreciation and use allowances, interest on debt associated with certain buildings, equipment and capital improvements, operation and maintenance expenses, and library expenses.” Circular, Section F.1. The “administrative” component refers to “general administration and general expenses, departmental administration, sponsored projects administration, student administration and services, and all other types of expenditures not listed specifically under one of the subcategories of facilities cost.” *Id.*

40. Because indirect costs are not completely attributable to specific grants, educational institutions are only permitted to recoup a certain calculated percentage of those costs from federal grant funds. The F&A rate is the mechanism used to determine the rate at which an educational institution will be reimbursed for the F&A costs associated with projects

performed at the educational institution. The F&A rate also represents the maximum percentage of indirect costs that an educational institution is allowed to recoup.

41. The applicable F&A rate for calculating the federally reimbursable F&A costs can vary depending on the institution and the type of activity incurring the costs. As the “cognizant Federal agency,” as referenced in the Circular, HHS is responsible for negotiating and approving the F&A rates educational institutions use. HHS negotiates the F&A rates through CAS. CAS is a separate division of HHS than the NIH, which is the HHS division responsible for administering federal grants.

42. The final negotiated F&A rates are memorialized in signed F&A Negotiation Agreements between the CAS and the educational institution. The proper calculation and application of F&A rates is material to the Government in determining the amount of F&A costs to be paid to an educational institution.

43. OHSU is responsible for submitting its F&A rate proposals to the CAS and negotiating with the CAS the final F&A rates for both OHSU and the ONPRC. The F&A rate becomes final when the CAS and representatives from the educational institution have both signed the F&A Negotiation Agreement.

44. As relevant here, Daniel Dorsa (hereinafter “Dorsa”), OHSU’s Senior Vice President for Research, approved and signed F&A Negotiation Agreements between OHSU and the CAS on March 2, 2005, May 25, 2010, and March 23, 2015.

45. OHSU’s F&A Negotiation Agreements established different F&A rates for OHSU “on campus research” and the ONPRC. The F&A Negotiation Agreements also established a 28% F&A rate for ONPRC Core Grant Research.

46. The March 2, 2005 F&A Negotiation Agreement set forth, in relevant part, the following F&A rates:

Entity	Cost Activity Type	Rate	Effective Period
OHSU	On-Campus Research	54%	7/01/2007 - 6/30/2009
ONPRC	Core Grant Research	28%	7/01/2007 - 6/30/2009
ONPRC	Non-Core Grant Research	64%	7/01/2007 - 6/30/2009

47. The May 25, 2010 F&A Negotiation Agreement set forth, in relevant part, the following F&A rates:

Entity	Cost Activity Type	Rate	Effective Period
OHSU	On-Campus Research	54%	7/01/2009 - 6/30/2013
ONPRC	Core Grant Research	28%	7/01/2009 - 6/30/2013
ONPRC	Non-Core Grant Research	75%	7/01/2009 - 6/30/2013

48. The March 23, 2015 F&A Negotiation Agreement uses the same rates and conditions as those agreed to on May 25, 2010, and extends the effective period for those rates until the CAS agrees to amend them.

49. Pursuant to the F&A Negotiation Agreements, OHSU must properly apply the F&A rates when seeking cost reimbursement from the Government. For example, OHSU must only apply the ONPRC F&A rate for costs associated with ONPRC research activities. OHSU is not permitted to use the ONPRC F&A rates for non-approved ONPRC activities.

V. OHSU's Misstatements and False Claims Regarding VGTI Grants

50. As discussed above, the VGTI's principal investigators and director submit grant applications to the NIH to secure federal grant funding for the VGTI. From 2008 through the present, the VGTI submitted multiple grant applications to the NIH, including the NIH approved and funded grants (the "at-issue VGTI grants"), listed in Exhibit A attached hereto.

51. In each at-issue VGTI grant application, OHSU provided information that was required by the NIH to process and approve the grant, which included the F&A rate applicable to the research for which the VGTI was applying for funding.

52. At all times relevant here, the F&A rate applicable to “OHSU On-Campus Research” was 54%.

53. From January 1, 2008 through at least December 31, 2015, OHSU and the VGTI knowingly submitted grant applications to the NIH for the at-issue VGTI grants that falsely stated that the “ONPRC Non-Core Grant Research” F&A rate (which was 64% from July 2007 to June 2009, and 75% from July 2009 to June 2015) applied to the at-issue VGTI grants.

54. At all times relevant here, OHSU knew that the VGTI was not an approved component of the ONPRC and that the OHSU On-Campus Research F&A rate of 54%—not the ONPRC Non-Core Grant Research F&A rate of either 64% or 75%, depending on the time period—applied to the at-issue VGTI grants.

55. If OHSU had not misstated the applicable F&A rate for the at-issue VGTI grants, the NIH would not have awarded grant funds at the higher F&A rate on the at-issue VGTI grants.

56. From January 1, 2008 through at least December 31, 2015, the NIH paid OHSU (through OHSU’s drawdowns on the NIH grant funds) for the at-issue VGTI grants at the higher F&A reimbursement rate applicable to ONPRC research activity.

VI. OHSU’s Misstatements and False Claims Regarding Building #637 Costs

57. One category of reimbursable indirect costs that may be recouped through federal grant funding is building maintenance and operating expenses. The appropriate amount of such indirect costs are calculated based on the square footage of building space dedicated to the research activities being funded by a particular grant.

58. The P51 core grant funds awarded by the NIH to OHSU under grant RR00163 may not be used for the indirect cost operating expenses and maintenance of building space used by non-ONPRC components without authorization from the NIH. Accordingly, OHSU's only permitted use of the P51 core grant funds awarded by the NIH under grant RR00163 for operating expenses and building maintenance is for building space directly dedicated to ONPRC components.

59. The VGTI has been based in Building #637 since the building's construction in 2000. Because the proposed West Campus situs for Building #637 had been purchased using P51 core grant funds awarded by the NIH under grant RR00163, OHSU sought permission from the NIH for the construction of Building #637. The NIH approved construction of Building #637 in 1998. Building #637, as proposed and ultimately as used for over a decade, housed two independent, non-ONPRC OHSU institutions: the VGTI and the NSI.

60. Prior to 2009, OHSU did not use P51 core grant funds awarded by the NIH under grant RR00163 to pay for the operating expenses and maintenance of Building #637.

61. From January 1, 2009 through at least December 31, 2015, OHSU claimed the entire square footage of Building #637 as ONPRC space even though, at all times relevant here, OHSU knew that the ONPRC did not occupy the entirety of Building #637 and that in fact, more than half of Building #637's space was being utilized by the VGTI and other OHSU institutions.

62. For example, the May 2008 P51 Grant Application OHSU submitted to the NIH states that the entire square footage of Building #637 is ONPRC space, when in fact Building #637 housed the VGTI and the NSI in May 2008. In addition, the May 2013 P51 Grant Application OHSU submitted to the NIH states that the entire square footage of Building #637 is ONPRC space, when in fact Building #637 housed the VGTI, the ONPRC, and other staff in

May 2013. Between fiscal year 2010 and 2015, the ONPRC occupied approximately 37% of the cost-reimbursable square feet of Building #637.

63. At all times relevant here, OHSU knowingly submitted false FFRs on behalf of the ONPRC. The FFRs overstated the amount of federal program income spent to pay costs because they impermissibly included Building #637's non-ONPRC costs.

VII. OHSU's Misstatements and False Claims Regarding ONPRC F&A Costs

64. In 2007, the CAS introduced a unique "ABC" F&A cost calculation methodology for NPRCs, including the ONPRC. The A-rate funds are designed to reimburse OHSU for all of the F&A services provided by OHSU to the ONPRC, and includes costs such as OHSU-allocated building and equipment depreciation, capital interest, and other expenses. The B-rate funds are designed to reimburse the ONPRC for all of the F&A services provided by the ONPRC to federal users of the ONPRC, and includes costs such as ONPRC facility and administrative operating costs funded from sources other than the P51 grant. The C-rate funds are designed to reimburse the ONPRC for all of the F&A services provided by the ONPRC to non-federal users of the ONPRC, and includes the B-rate cost pool plus all directly funded F&A-type P51 grant expenditures.

65. OHSU has unrestricted use of funds recouped at the A-rate. However, funds recouped at the B- and C-rates are treated as program income to the ONPRC's P51 core grant award, and the policies related to federal P51 grant program income, as stated in the NIH Grants Policy Statement, apply to their use. Under those policies, F&A costs reimbursed through the B- and C- rates are required to be added to the P51 grant award as program income for use by the ONPRC to support approved ONPRC activities. The total F&A recovery paid from the P51 grant to OHSU cannot exceed the 28% rate established in the F&A Negotiation Agreement.

66. Since 2004, OHSU has imposed an assessment on the ONPRC to cover overhead costs that exceed the F&A rates established in the F&A Negotiation Agreements. This assessment has been known by various names and is currently referred to as overhead cost allocation (“OCA”).

67. From January 1, 2005 through at least December 31, 2013, OHSU knowingly charged ONPRC an OCA, which resulted in OHSU being reimbursed with federal funds for costs in excess of the agreed-upon 28% ONPRC Core Grant Research F&A rate. To pay the OCA, OHSU used restricted B-rate program income that, per OMB and the Guidelines for the National Primate Centers, are considered federal funds and are to be returned to the award and are restricted in use to the purposes of the award. In assessing the ONPRC an OCA, OHSU took restricted program income from the ONPRC that it was not entitled to receive.

68. OHSU then knowingly misstated the ONPRC’s program income in its annual FFRs. The FFRs OHSU submitted falsely underreported the ONPRC program income because they reflected OHSU’s impermissible deductions of the OCA from the ONPRC’s restricted program income funds.

FIRST CAUSE OF ACTION

**Violations of the False Claims Act - 31 U.S.C. § 3729(a)(1)(A) and (B)
VGTI Grants**

69. The Government incorporates by reference paragraphs 1 through 68 above as if fully set forth in this paragraph.

70. The Government seeks relief against OHSU under the False Claims Act, 31 U.S.C. § 3729(a)(1) and (a)(2) (2000), and, as amended, 31 U.S.C. § 3729(a)(1)(A) and (a)(1)(B).

71. Defendant knowingly presented or caused to be presented false or fraudulent claims for payment or approval to officers, employees, or agents of the Government, with knowledge that the claims were false, in violation of the False Claims Act by:

(a) Submitting drawdown requests on each of the at-issue VGTI grants claiming funds at the higher ONPRC F&A indirect cost reimbursement rate.

72. OHSU knowingly made or used, or caused to be made or used, false records or statements to get a false or fraudulent claim paid or approved by the United States by:

(a) Submitting VGTI grant applications between 2008 and 2014 representing that the ONPRC non-core grant research F&A rate applied.

73. In seeking and receiving the higher F&A rates for the at-issue VGTI grants, OHSU received more federal funds than it was entitled to receive.

74. OHSU's misrepresentation of the correct F&A rate on the at-issue VGTI grant applications submitted to the NIH were material in causing the NIH to pay or continue to pay OHSU the grant funds to which OHSU was not entitled, and to which OHSU knew it was not entitled.

75. By reason of the false or fraudulent claims and statements OHSU knowingly presented, the Government has been damaged in a substantial amount to be determined at trial, and is entitled to recover treble damages plus a civil monetary penalty for each false claim.

76. Pursuant to the False Claims Act, the Government is entitled to recover from OHSU civil penalties of \$5,500—\$11,000 per violation of the False Claims Act.

SECOND CAUSE OF ACTION

Violations of the False Claims Act - 31 U.S.C. § 3729(a)(1)(A) and (B)

Building #637 Costs

77. The Government incorporates by reference paragraphs 1 through 76 above as if fully set forth in this paragraph.

78. The Government seeks relief against OHSU under the False Claims Act, 31 U.S.C. § 3729(a)(1) and (a)(2) (2000), and, as amended, 31 U.S.C. § 3729(a)(1)(A) and (a)(1)(B).

79. The Defendant knowingly presented or caused to be presented false or fraudulent claims for payment or approval to officers, employees, or agents of the Government, with knowledge that the claims were false, in violation of the False Claims Act by:

- (a) Submitting regular drawdown requests on the P51 grant between 2009 and 2015 claiming funds for building costs to which it was not entitled; and
- (b) Submitting annual Federal Status Report/Federal Financial Reports between 2009 and 2015 that falsely overstated the amount of disbursed ONPRC program income.

80. OHSU knowingly made or used, or caused to be made or used, false records or statements to get a false or fraudulent claims paid or approved by the United States by:

- (a) Asserting that the VGTI became part of the ONPRC in the 2010 P51 Annual Progress Report when OHSU had not received approval from the NIH to make the VGTI a component of the ONPRC, as required by the terms of the federal grant awards.

81. In seeking and receiving costs for Building #637 for fiscal years 2010 through 2015 from the program income portion of the ONPRC P51 grant, OHSU received more federal funds than it was entitled to and deprived the ONPRC of federal program income.

82. OHSU's misrepresentation that the VGTI had become part of the ONPRC and that the entirety of Building #637 was being utilized by the ONPRC was material in causing the NIH to pay or continue to pay OHSU money for Building #637 costs to which OHSU knew it was not entitled.

83. By reason of the false or fraudulent claims that OHSU knowingly presented, the Government has been damaged in a substantial amount to be determined at trial, and is entitled to recover treble damages plus a civil monetary penalty for each false claim.

84. Pursuant to the False Claims Act, the Government is entitled to recover from OHSU civil penalties of \$5,500—\$11,000 per violation of the False Claims Act.

THIRD CAUSE OF ACTION

Violations of the False Claims Act - 31 U.S.C. § 3729(a)(1)(A) and (B) ONPRC F&A Costs

85. The Government incorporates by reference paragraphs 1 through 84 above as if fully set forth in this paragraph.

86. The Government seeks relief against OHSU under the False Claims Act, 31 U.S.C. § 3729(a)(1) and (a)(2) (2000), and, as amended, 31 U.S.C. § 3729(a)(1)(A) and (a)(1)(B).

87. Defendant knowingly presented or caused to be presented false or fraudulent claims for payment or approval to officers, employees, or agents of the Government, with knowledge that the claims were false, in violation of the False Claims Act by:

- (a) Submitting regular drawdown requests on the P51 grant claiming funds to pay the OCA assessment, to which OHSU was not entitled; and
- (b) Submitting annual Federal Status Reports/Federal Financial Reports that falsely understated the total ONPRC program income earned.

88. OHSU knowingly made or used, or caused to be made or used, false records or statements to get a false or fraudulent claim paid or approved by the United States by:

- (a) Submitting annual Federal Status Reports/Federal Financial Reports that falsely understated the total ONPRC program income earned.

89. In seeking and receiving an OCA from the ONPRC that OHSU knew exceeded the agreed-upon 28% ONPRC F&A rate, OHSU received more federal funds than it was entitled to and deprived the ONPRC of federal program income.

90. OHSU's misrepresentation of the ONPRC's program income was material in causing the NIH to pay or continue to pay OHSU the grant funds to which OHSU knew it was not entitled.

91. By reason of the false or fraudulent claims that OHSU knowingly presented, the Government has been damaged in a substantial amount to be determined at trial, and is entitled to recover treble damages plus a civil monetary penalty for each false claim.

92. Pursuant to the False Claims Act, the Government is entitled to recover from OHSU civil penalties of \$5,500—\$11,000 per violation of the False Claims Act.

FOURTH CAUSE OF ACTION

Payment by Mistake of Fact

93. The Government incorporates by reference paragraphs 1 through 92 above as though fully set forth in this paragraph.

94. As an alternative to, and without waiving rights under the False Claims Act, OHSU owes the Government damages for monies paid by mistake, the amount of which will be proven at trial.

95. In seeking and receiving indirect cost reimbursements for the at-issue VGTI grants that were calculated based on the improper application of the ONPRC F&A Rate; by improperly charging costs for the non-ONPRC programs portion of Building #637 to the ONPRC P51 grant, which was required to be used exclusively for approved ONPRC purposes; and by charging an OCA to the ONPRC, the Government made payments to OHSU based on a mistaken and erroneous understanding that OHSU was entitled to those funds.

96. This erroneous belief was material to the Government's calculation of the amount of federal grant funds to be paid to OHSU. If the Government had known that it was being charged by OHSU more than it was entitled to, it would not have paid those funds to OHSU.

97. The Government has lost use of such funds and has sustained damages, the sum of which is to be determined at trial, and should be awarded interest for the same.

98. It has been necessary for the Government to incur costs in the filing and prosecution of this action, and the Government should be awarded such costs against OHSU.

FIFTH CAUSE OF ACTION

Unjust Enrichment

99. The Government incorporates by reference paragraphs 1 through 98 above as though fully set forth in this paragraph.

100. As an alternative, and without waiving rights under the False Claims Act, OHSU owes the Government damages under the doctrine of unjust enrichment, with the sum of such damages to be determined at trial.

101. In seeking and receiving indirect cost recoveries for the at-issue VGTI grants that were calculated based on the improper application of the ONPRC F&A Rate; by improperly charging costs for the non-ONPRC programs portion of Building #637 to the ONPRC P51 grant, which was required to be used exclusively for approved ONPRC purposes; and by charging an OCA to the ONPRC, OHSU received money from the Government to which it was not entitled and therefore was unjustly enriched. The circumstances of these payments are such that, in equity and good conscience, OHSU should not retain these payments, the amount of which is to be determined at trial.

102. The Government conferred, and OHSU accepted, monies under such circumstances that in equity and good conscience OHSU should not be permitted to retain. It would be inequitable, and OHSU would be unjustly enriched, if OHSU was permitted to retain the funds that belong to the Government.

103. The Government has lost the use of such funds and should be awarded interest for the same.

104. It has been necessary to the Government to incur costs in the filings and prosecution of this action, and the Government should be awarded such costs against OHSU.

PRAYER FOR RELIEF

WHEREFORE, plaintiff, the United States, requests that judgment be entered in its favor as follows:

(a) On the First, Second, and Third Claims for relief (violations of the FCA, 31 U.S.C. §§ 3729(a)(1) and 3729(a)(2) and, as amended, 31 U.S.C. §§ 3729(a)(1)(A) and 3729(a)(1)(B)), a judgment against OHSU for treble the United States' damages, in an amount to

be determined at trial, plus civil penalties that are allowed by law for each false claim submitted in violation of the FCA;

(b) On the First, Second, and Third Claims for relief, an award of costs pursuant to 31 U.S.C. § 3729(a)(3);

(c) On the Fourth Claim for relief (Payment Under Mistake of Fact), a judgment in an amount to be determined at trial, together with costs and interest;

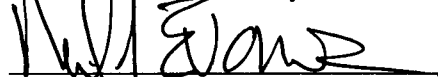
(d) On the Fifth Claim for relief (Unjust Enrichment), a judgment in an amount to be determined at trial, together with costs and interest; and

(e) Such further relief as is proper.

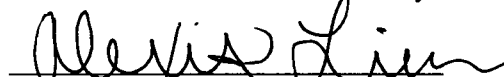
DATED this 28th day of October, 2016.

Respectfully submitted,

BILLY J. WILLIAMS
United States Attorney



NEIL J. EVANS, OSB #96551
Assistant United States Attorney



ALEXIS A. LIEN, OSB #110569
Assistant United States Attorney

Type	Actv	Project	PI Name(s) All	Dept Name	Award Issue Date	Application IDC Rate	Correct IDC rate
1	R01	AG037042-01	MESSAOUDI, ILHEM	VGTI	3/22/10	64%	54%
5	R01	AG037042-02	MESSAOUDI, ILHEM	VGTI	3/3/11	64%	54%
5	R01	AG037042-03	MESSAOUDI, ILHEM	VGTI	3/14/12	64%	54%
3	R01	AG037042-03S1	MESSAOUDI, ILHEM	VGTI	8/29/12	75%	54%
2	R01	AI021640-28A1	NELSON, JAY A	VGTI	1/18/13	75%	54%
5	R01	AI021640-29	NELSON, JAY A	VGTI	1/15/14	75%	54%
2	R37	AI054292-06	PICKER, LOUIS J.	VGTI	7/3/08	Dual 54%/64%	54%
5	R37	AI054292-07	PICKER, LOUIS J.	VGTI	7/31/09	Dual 54%/64%	54%
5	R37	AI054292-08	PICKER, LOUIS J.	VGTI	6/24/10	Dual 54%/64%	54%
5	R37	AI054292-09	PICKER, LOUIS J.	VGTI	6/30/11	Dual 54%/64%	54%
5	R37	AI054292-10	PICKER, LOUIS J.	VGTI	6/28/12	Dual 54%/64%	54%
4	R37	AI054292-11	PICKER, LOUIS J.	VGTI	4/23/13	75%	54%
5	R37	AI054292-12	PICKER, LOUIS J.	VGTI	6/16/14	75%	54%
2	R01	AI059457-06	FRUH, KLAUS J	VGTI	11/19/10	75%	54%
5	R01	AI059457-07	FRUH, KLAUS J	VGTI	11/17/11	75%	54%
5	R01	AI059457-08	FRUH, KLAUS J	VGTI	11/14/12	75%	54%
5	R01	AI059457-09	FRUH, KLAUS J	VGTI	11/19/13	75%	54%
5	R01	AI059457-10	FRUH, KLAUS J	VGTI	11/17/14	75%	54%
5	R01	AI060392-05	PICKER, LOUIS J.	VGTI	3/13/08	51%/59%	51%
2	R56	AI060392-06	PICKER, LOUIS J.	VGTI	9/16/10	75%	54%
3	R01	AI070890-02S1	FRUH, KLAUS J	VGTI	9/28/09	64%	54%
1	U01	AI082196-01	SLIFKA, MARK K	VGTI	4/3/09	54%/64%	54%
5	U01	AI082196-03	SLIFKA, MARK K	VGTI	3/7/11	54%/64%	54%
7	R21	AI087474-02	SACHA, JONAH B	VGTI	2/25/11	75%	54%
1	R21	AI088442-01	JARVIS, MICHAEL A.	VGTI	3/5/10	64%	54%
5	R21	AI088442-02	JARVIS, MICHAEL A.	VGTI	2/25/11	64%	54%
1	R01	AI090490-01A1	MOSES, ASHLEE V.	VGTI	4/27/10	64%	54%
5	R01	AI090490-02	MOSES, ASHLEE V.	VGTI	4/22/11	64%	54%
5	R01	AI090490-03	MOSES, ASHLEE V.	VGTI	4/10/12	64%	54%
5	R01	AI090490-04	MOSES, ASHLEE V.	VGTI	4/5/13	64%	54%
5	R01	AI090490-05	MOSES, ASHLEE V.	VGTI	3/24/2014	64%	54%
1	P01	AI094417-01	PICKER, LOUIS J.	VGTI	7/15/11	75%	54%
5	P01	AI094417-02	PICKER, LOUIS J.	VGTI	6/22/12	75%	54%
5	P01	AI094417-03	PICKER, LOUIS J.	VGTI	6/14/13	75%	54%
5	P01	AI094417-04	PICKER, LOUIS J.	VGTI	6/26/14	75%	54%
1	R01	AI095113-01	PICKER, LOUIS J.	VGTI	2/14/11	75%	54%
5	R01	AI095113-02	PICKER, LOUIS J.	VGTI	1/31/12	75%	54%
5	R01	AI095113-03	PICKER, LOUIS J.	VGTI	1/28/13	75%	54%
5	R01	AI095113-04	PICKER, LOUIS J.	VGTI	1/14/14	75%	54%
1	R01	AI098723-01	SLIFKA, MARK K	VGTI	4/26/12	75%	54%
5	R01	AI098723-02	SLIFKA, MARK K	VGTI	4/12/13	75%	54%
5	R01	AI098723-03	SLIFKA, MARK K	VGTI	4/15/14	75%	54%

Type	Actv	Project	PI Name(s) All	Dept Name	Award Issue Date	Application IDC Rate	Correct IDC rate
1	R21	AI101282-01	HIRSCH, ALEC	VGTI	5/18/12	75%	54%
5	R21	AI101282-02	HIRSCH, ALEC	VGTI	5/21/13	75%	54%
1	R21	AI103498-01	FRUH, KLAUS J	VGTI	1/24/13	75%	54%
5	R21	AI103498-02	FRUH, KLAUS J	VGTI	1/24/14	75%	54%
1	R21	AI108401-01	SACHA, JONAH B	VGTI	5/14/13	75%	54%
5	R21	AI108401-02	SACHA, JONAH B	VGTI	4/4/14	75%	54%
1	R21	AI112433-01	SACHA, JONAH B	VGTI	4/10/14	75%	54%
1	R21	AI112837-01	SACHA, JONAH B	VGTI	7/30/14	75%	54%
5	R01	CA075922-13	WONG, SCOTT W	VGTI	4/15/09	64%	54%
2	R01	CA075922-14	WONG, SCOTT W	VGTI	5/10/10	64%	54%
5	R01	CA075922-15	WONG, SCOTT W	VGTI	2/16/11	64%	54%
5	R01	CA075922-16	WONG, SCOTT W	VGTI	3/14/12	64%	54%
5	R01	CA075922-17	WONG, SCOTT W	VGTI	2/28/13	64%	54%
5	R01	CA075922-18	WONG, SCOTT W	VGTI	2/28/14	64%	54%
	R01	CA094011-06A2	FRUH, KLAUS J	VGTI	7/16/09	64%	54%
		CA094011-Stimulus	FRUH, KLAUS J	VGTI			
5	R01	CA094011-07	FRUH, KLAUS J	VGTI	6/16/10	64%	54%
2	R01	CA099906-06A2	MOSES, ASHLEE V.	VGTI	4/9/10	64%	54%
5	R01	CA099906-07	MOSES, ASHLEE V.	VGTI	1/11/11	64%	54%
5	R01	CA099906-08	MOSES, ASHLEE V.	VGTI	3/14/12	64%	54%
5	R01	CA099906-09	MOSES, ASHLEE V.	VGTI	1/18/13	64%	54%
5	R01	CA099906-10	MOSES, ASHLEE V.	VGTI	1/3/14	64%	54%
1	R21	CA183608-01	WONG, SCOTT W	VGTI	11/20/13	75%	54%
5	R21	CA183608-02	WONG, SCOTT W	VGTI	11/10/14	75%	54%
1	R01	DE021291-01	PICKER, LOUIS J.	VGTI	11/19/10	75%	54%
5	R01	DE021291-02	PICKER, LOUIS J.	VGTI	11/15/11	75%	54%
5	R01	DE021291-03	PICKER, LOUIS J.	VGTI	11/9/12	75%	54%
3	R01	DE021291-03S1	PICKER, LOUIS J.	VGTI	9/13/13	75%	54%
5	R01	DE021291-04	PICKER, LOUIS J.	VGTI	11/22/13	75%	54%
5	R01	DE021291-05	PICKER, LOUIS J.	VGTI	11/6/14	75%	54%
1	U54	AI081680-01	Nelson, Jay		4/20/2009	64%	54%
5	U54	AI081680-02	Nelson, Jay		3/1/2010	54%/64%	54%
5	U54	AI081680-03	Nelson, Jay		3/1/2011	54%/64%	54%
5	U54	AI081680-04	Nelson, Jay		3/1/2012	64%	54%
5	U54	AI081680-05	Nelson, Jay		2/26/2013	64%	54%