

guideway route miles, as well as population and population density. Deadhead miles are not included for purposes of calculating revenue vehicle miles.

3. Each fiscal year, the CTA must submit to the National Transit Database (“NTD”) a certification of data, including that year’s motor bus vehicle revenue miles, in order to receive funding under Section 5307.
4. The Chief Executive Officer of a Section 5307-funded entity is the official responsible for certifying the accuracy and truthfulness of NTD-submitted data.
5. The President of the CTA is the official responsible for certifying the accuracy and truthfulness of data submitted to the NTD.
6. Between the reporting years of 2001 and 2010 (“reporting years” or “time period”), the CTA knowingly used definitions of bus revenue vehicle miles and deadhead miles that are both different from and noncompliant with the definitions required under the NTD reporting manuals, NTD reporting glossary, and U.S. Department of Transportation, Federal Transit Authority (“FTA”) circular guidance and/or regulations.
7. As a result of the CTA’s use of these definitions, during the reporting years, CTA misreported bus vehicle revenue miles to the NTD.
8. During the time period in which CTA misreported the number of revenue miles, the Federal government authorized disbursement of funds to CTA that were in excess of those permitted by law under the Section 5307 FTA formula.
9. With CTA’s knowledge and as a result of CTA’s inaccurate reporting to the FTA, the United States government overpaid funds to CTA under the Section 5307 formula grant program.

PARTIES, JURISDICTION AND VENUE

10. Chicago Transit Authority is an Illinois municipal corporation that has continually transacted business in the State of Maryland through the submission of transit revenue data to the National Transit Database Program.
11. The Federal Transit Administration of the U.S. Department of Transportation contracted with Savantage Solutions to support the National Transit Database for systems and software development, safety and security data validation and technical assistance, and data analysis and production of annual reports relevant to Section 5307 requirements. Savantage Solutions has a corporate office in the State of Maryland and more specifically within the geographical limitations of the District of Maryland.
12. The United States of America is here a named plaintiff because funds of the United States of America (“Federal funds”) were and are awarded to defendant CTA, pursuant to 49 U.S.C. § 5307 as a result of the false claims alleged in this Complaint.
13. *Qui tam* Plaintiff Cause of Action (“Relator”) is a nonpartisan, nonprofit organization that uses public advocacy and legal reform strategies to ensure greater transparency in government and protect taxpayer interests and economic freedom.
14. Jurisdiction of this Court is founded upon 28 U.S.C. § 1331, 28 U.S.C. § 1345, 31 U.S.C. § 3729 and 31 U.S.C. § 3732(a) inasmuch as the United States of America is a party hereto and the claims set forth herein are founded upon a law of the United States of America.
15. Cause of Action is an “original source” under 31 U.S.C. § 3730(e)(4)(B): To the extent that there has been a public disclosure unknown to Relator, Relator has knowledge that is independent of and materially different from any publicly disclosed information and

has voluntarily provided that information to the Government before filing this action pursuant to 31 U.S.C. § 3730(e)(4)(B).

16. Venue lies in this District pursuant to 28 U.S.C. § 1391(b), 31 U.S.C. § 3729, and 31 U.S.C. § 3732(a) inasmuch as the Defendant has transacted business in the District of Maryland and has committed a violation of the False Claims Act within this District.
17. Relators have provided to the United States Attorney for the District of Maryland and the Attorney General of the U.S. Department of Justice a statement of all material evidence and information related to this Complaint pursuant to 31 U.S.C. § 3730(a)(2). This disclosure statement supports the existence of “submission of a knowingly false or fraudulent claim for payment or approval,” under the False Claims Act (31 U.S.C. § 3729(a)(1)).
18. This suit is not based upon prior public disclosures of allegations or transactions in a Federal criminal, civil, or administrative hearing in which the Government or its agent is a party, a congressional, Government Accountability Office, or other Federal report, hearing, audit, or investigation, or from the news media.
19. To the extent that there has been a public disclosure unknown to Relator, Cause of Action is an “original source” under 31 U.S.C. § 3730(e)(4)(B): Relator has knowledge that is independent of and materially different from any publicly disclosed information and has voluntarily provided that information to the Government before filing this action pursuant to 31 U.S.C. § 3730(e)(4)(B).

FACTS

20. Between the beginning of the Section 5307 program for Urbanized Zone Areas (“UZA”) and the present, the Chicago Transit Authority has consistently applied a

definition of bus vehicle revenue mile that is inconsistent with the definition applied by other UZA's and the definition provided by the NTD Reporting Manuals.

21. The time period that is the subject of this complaint ("relevant time period") encompasses those years that fall within the statute of limitations of the False Claims Act, pursuant to 31 U.S.C. § 3731(b).
22. The years of the relevant time period are NTD reporting years 2001 through 2010.
23. The current formula used for calculating formula grant funding based on motor bus operations for Fiscal Year 2012 is found at 77 F.R. 1826.
24. Upon information and belief, the percentage allocation for formula grant funding under Section 5307 has changed per year but the formula has, for the relevant time period, depended in part on vehicle revenue miles reported on an annual basis.
25. The CTA has presented or caused to be presented data to the NTD Program for all of the reporting years between 2001 and 2010.
26. For the reporting year 2001, CTA President Frank Kruesi certified on or about July 7, 2002, through the NTD reporting manual, that CTA bus vehicle revenue miles were 63,758,189, and total bus miles were 64,673,100.
27. For the reporting year 2002, CTA President Frank Kruesi certified on or about February 17, 2004, through the NTD reporting manual, that CTA bus vehicle revenue miles were 65,901,103, and total bus miles were 66,931,419.
28. For the reporting year 2003, CTA President Frank Kruesi certified on or about December 10, 2004, through the NTD reporting manual, that CTA bus vehicle revenue miles were 66,377,934, and total bus miles were 67,478,029.

29. For the reporting year 2004, CTA President Frank Kruesi certified on or about January 11, 2006, through the NTD reporting manual, that CTA bus vehicle revenue miles were 66,572,049, and total bus miles were 67,782,999.
30. For the reporting year 2005, CTA President Frank Kruesi certified on or about December 12, 2006, through the NTD reporting manual, that CTA bus vehicle revenue miles were 66,811,532, and total bus miles were 68,208,151.
31. For the reporting year 2006, CTA President Frank Kruesi certified on or about September 18, 2007, through the NTD reporting manual, that CTA bus vehicle revenue miles were 66,240,047, and total bus miles were 68,203,973.
32. For the reporting year 2007, CTA President Ron Huberman certified on or about August 26, 2008, through the NTD reporting manual, that CTA bus vehicle revenue miles were 68,329,658, and total bus miles were 70,404,494.
33. For the reporting year 2008, CTA President Richard Rodriguez certified on or about November 3, 2009, through the NTD reporting manual, that CTA bus vehicle revenue miles were 68,740,265, and total bus miles were 70,821,055.
34. For the reporting year 2009, CTA President Richard Rodriguez certified on or about September 14, 2010, through the NTD reporting manual, that CTA bus vehicle revenue miles were 67,442,222, and total bus miles were 69,471,309.
35. For the reporting year 2010, CTA President Richard Rodriguez certified on or about September 29, 2011, through the NTD reporting manual, that CTA bus vehicle revenue miles were 56,821,006, and total bus miles were 59,940,922.
36. In 2007, a performance audit of the CTA was performed for the State of Illinois Auditor General ("IL-OAG"), with the final report released in March 2007 by then-

Illinois Auditor General William G. Holland. A true and accurate copy of the performance audit is attached to this complaint as Exhibit 1.

37. During the course of the audit, the audit team discovered that CTA was significantly overstating its reported bus vehicle revenue miles in its annual applications for grant funding under the formula grant program administered by FTA pursuant to 49 U.S.C. § 5307.
38. Thomas A. Rubin ("Rubin") was a member of the audit team, and a true and accurate copy of his sworn affidavit is attached to this complaint as Exhibit 2.
39. Rubin stated in his affidavit that the team discovered that CTA inaccurately reported "deadhead hours/miles" (i.e., miles and hours a vehicle travels when out of revenue service) as "revenue miles" when a comparison of CTA average vehicle revenue miles as a percent of vehicle miles to those of its peer transit group ("peer group") over a six-year period.
40. The NTD glossary defines "deadhead miles" as "[t]he miles and hours that a vehicle travels when out of revenue service. Deadhead includes: Leaving or returning to the garage or yard facility; changing routes; when there is no expectation of carrying revenue passengers."
41. The NTD glossary defines "revenue miles" as "[t]he time when a vehicle is available to the general public and there is an expectation of carrying passengers. These passengers either: Directly pay fares; are subsidized by public policy, or provide payment through some contractual arrangement. Vehicles operated in fare free service are considered in revenue service. Revenue service includes: Layover / recovery time."

42. The 2007 Performance Audit concluded that between 1999 and 2004, the average vehicle revenue miles as a percent of vehicle miles that the CTA reported was approximately 99 percent.
43. During the same period, the peer group reported that approximately 87 percent of vehicle miles were revenue miles.
44. During the course of the audit, CTA officials were confronted about irregularities in their reporting of deadhead miles.
45. CTA refused to acknowledge that deadhead miles had been inaccurately reported as revenue miles.
46. CTA knew, for each reporting year it certified data to the NTD, that it falsely reported vehicle revenue miles.
47. CTA was informed by the audit team that the appropriate action to take would be to inform the FTA of its misreporting.
48. CTA knew, at all times relevant, that it was supposed to be reimbursed only for revenue miles.
49. CTA falsely classified deadhead miles as revenue miles in its certified submissions to the NTD.
50. CTA knew that its false reporting of revenue miles as deadhead miles defrauded the Federal government.
51. A twenty-five page technical report prepared by the team and Rubin described the manner in which CTA had overstated its reported bus vehicle revenue miles. A true and accurate copy of the audit team's technical report delivered to CTA is attached to this complaint as Exhibit 3.

52. Copies of the technical report were provided to both CTA and IL-OAG.
53. Upon information and belief, IL-OAG failed to forward the technical report to either the FTA or the Department of Transportation Office of Inspector General (“DOT-OIG”) and did not take further action based on the information contained in the technical report.
54. Rubin states that he reported the information relating to CTA’s fraudulent reporting to DOT-OIG in 2009.
55. Relator Cause of Action received information that has not been publicly disclosed through a Federal criminal, civil, or administrative hearing, or through a congressional, Government Accountability Office, or other Federal reporting, hearing, audit, or investigation, or from the news media.
56. Cause of Action received the report of the March 2007 IL-OAG, which is not a congressional, Government Accountability Office, or other Federal report, hearing, audit, or investigation.
57. These statements made by Rubin to Cause of Action were never publicly disclosed.
58. That information included the sworn affidavit of Rubin attached as Exhibit 2.
59. That information included the technical report of the audit team that was never publicly disclosed as defined by the False Claims Act.
60. Relator qualifies as an “original source” under the False Claims Act, even if any information has been publicly disclosed, because it has knowledge that is independent of and materially adds to any purported information that has been publicly disclosed.

STATUTORY BACKGROUND

61. For violations occurring prior to May 20, 2009, the false claims provision of the False Claims Act, at 31 U.S.C. § 3729(a)(1) (1986), provides, in pertinent part, that a person is liable to the United States government for each instance in which the person “knowingly presents, or causes to be presented, to an officer or employee of the United States Government . . . [a] false or fraudulent claim for payment or approval.”
62. For violations occurring on or after May 20, 2009, the false claims provision of the False Claims Act, at 31 U.S.C. § 3729(a)(1)(A) (2009), as amended by the Fraud Enforcement and Recovery Act of 2009 (“FERA”), provides in pertinent part that any person who “knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval” shall be liable to the United States Government.
63. The false statements provision of the False Claims Act, prior to the FERA amendments, provides that a person is liable to the United States Government for each instance in which the person “knowingly makes, uses, or causes to be made or used a false record or statement to get a false or fraudulent claim paid or approved by the Government.” 31 U.S.C. § 3729(a)(2) (1986). As amended by FERA, the false statements provision of the False Claims Act makes liable any person who “knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim.” 31 U.S.C. § 3729(a)(1)(B) (2009).
64. The False Claims Act defines the term “knowing” and “knowingly” to mean that a person, with respect to information: (1) “has actual knowledge of the information”; (2) “acts in deliberate ignorance of the truth or falsity of the information”; or (3) “acts in reckless disregard of the truth or falsity of the information.” 31 U.S.C. § 3729(b) (1986); 31 U.S.C. § 3729(b)(1)(A) (2009). The False Claims Act further provides that

“no proof of specific intent to defraud” is required. 31 U.S.C. § 3729(b) (1986); 31 U.S.C. § 3729(b)(1)(B) (2009).

COUNT I

FEDERAL FALSE CLAIMS ACT

31 U.S.C. § 3729 (1986)

65. Plaintiffs re-allege, and fully incorporate herein by reference, paragraphs 1 through 64 herein.

66. In performing all of the acts set out herein, Defendant defrauded the United States of America for the NTD reporting years 2001 through 2007 by

- a. Knowingly presenting, or causing to be presented, false and fraudulent claims for payment or approval, to an officer, employee, or agent of the United States of America, in contravention of the False Claims Act (31 U.S.C. § 3729(a)(1) (1986));
- b. Knowingly making, using or causing to be made or used a false record or statement to get a false or fraudulent claim paid or approved by the Government, in contravention of the False Claims Act (31 U.S.C. § 3729(a)(2) (1986));

67. The United States Government, upon presentation of such claims for payment, remitted payment despite the false nature of such claims.

68. Pursuant to 31 U.S.C. § 3729(a), Defendant is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000 for each violation of the False Claims Act committed by Defendant.

69. Pursuant to 31 U.S.C. § 3729(a), Defendant is liable to the United States Government for three times the amount of all such damages sustained by the United States Government to be determined at trial.

COUNT II

FEDERAL FALSE CLAIMS ACT

31 U.S.C. § 3729 (2009)

70. Plaintiffs re-allege, and fully incorporate herein by reference, paragraphs 1 through 69 herein.

71. In performing all of the acts set out herein, Defendant defrauded the United States of America for the NTD reporting years 2008 through 2010 by

- a. Knowingly presenting, or causing to be presented, false and fraudulent claims for payment or approval to the United States Government, in contravention of the False Claims Act (31 U.S.C. § 3729(a)(1) (2009));
- b. Knowingly making, using, or causing to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government, in contravention of the False Claims Act (31 U.S.C. § 3729(a)(2) (2009));

72. The United States Government, upon presentation of such claims for payment, remitted payment despite the false nature of such claims.

73. Pursuant to 31 U.S.C. § 3729(a), Defendant is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000 for each violation of the False Claims Act committed by Defendant.

74. Pursuant to 31 U.S.C. § 3729(a), Defendant is liable to the United States Government for three times the amount of all such damages sustained by the United States Government to be determined at trial.

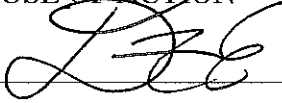
PRAYER

WHEREFORE, Relator Cause of Action, on behalf of Plaintiff, United States Government, prays for judgment against Defendant for:

75. A judgment against Defendant for all losses and damages that have been, or will be, sustained by the United States Government during the relevant time period as a result of its violations of the False Claims Act, as alleged herein, and triple the amount of such damages and for forfeiture for all excess Federal funds paid by the United States Government to Defendant under the formula grant program of 49 U.S.C. § 5307 in violation of the FCA pursuant to 31 U.S.C. § 3729; civil penalties of not less than \$5,000, nor more than \$10,000, for each and every such violation; and such award to Relator to which it is statutorily entitled.
76. Declaratory judgment that the herein-described false claims, false records, and false statements by Defendant are in violation of the False Claims Act;
77. An injunction against Defendant that they not engage in further false claims, use of false records, and false statements with respect to its reporting of data to the National Transit Database and the Federal Transit Administration;
78. Reasonable attorney's fees;
79. Costs incurred in the prosecution hereof; and
80. Such other relief as the Court deems just and equitable.

Attorney for Relators/Plaintiff

CAUSE OF ACTION



Daniel Z. Epstein
2100 M Street N.W., Suite 170-247
Washington, D.C. 20037-1233
Telephone: (202) 507-5880

Dated: 5/8/12