

1 PAUL D. SCOTT, ESQ.  
California State Bar # 145975  
2 LAW OFFICES OF PAUL D. SCOTT  
201 Filbert, Suite 401  
3 San Francisco, California 94133  
Tel: (415) 981-1212  
4 Fax: (415) 981-1215

5 Attorney for Relator  
Jerry H. Brown II  
6

7 IN THE UNITED STATES DISTRICT COURT  
8 FOR THE DISTRICT OF NORTHERN DISTRICT OF CALIFORNIA

9	THE UNITED STATES OF AMERICA ex rel.	)	
10	JERRY H. BROWN II.	)	NO. C04-4424 MEJ
11	Plaintiffs,	)	<b>FIRST-AMENDED COMPLAINT</b>
12	v.	)	<b>DEMAND FOR JURY TRIAL</b>
13	APL LIMITED, NOL GROUP, MAERSK	)	<del>FILED UNDER SEAL</del>
14	LINE, LIMITED, A.P. MOLLER - MAERSK	)	
15	GROUP, and Does 3-50,	)	
16	Defendants.	)	

17  
18 JURISDICTION AND VENUE

19 1. This action is brought under the False Claims Act ("FCA" or "Act"), 31 U.S.C.  
20 § 3729 et seq., by plaintiff/relator Jerry H. Brown II ("relator") on behalf of the United States of  
21 America, under the qui tam provisions of the Act.

22 2. This Court has jurisdiction over this matter under 28 U.S.C. §§ 1331 and 28 U.S.C.  
23 § 1345, for the United States is a party to this matter and the causes of action set forth herein are  
24 founded upon a law of the United States of America.  
25

26 3. Venue lies in this District pursuant to 28 U.S.C. § 1391(b) and 31 U.S.C. § 3732, for  
27 the defendants conduct business in this District, and a substantial part of the events or omissions  
28

1 giving rise to the claims occurred in this District.

2 PARTIES

3  
4 4. Defendant APL Limited (aka "American President Lines") (hereinafter "APL") is a  
5 corporation with its principal offices in the United States located in Oakland, California. APL is one  
6 of the world's largest container transportation companies.

7  
8 5. Defendant NOL Group (aka Neptune Orient Lines) (referred to hereinafter as "NOL") is a  
9 business organization of unknown type headquartered in Singapore. At all times relevant referenced  
10 herein, defendant APL Limited was a wholly owned subsidiary of NOL. Relator is informed and  
11 believes that at all times relevant herein, NOL dominated, directed and controlled the operations of  
12 APL Limited. Relator is further informed and believes that NOL authorized and approved the  
13 conduct of APL set forth herein.

14  
15 6. Defendant MAERSK LINE, LIMITED ("Maersk Line") is a corporation with  
16 headquarters located in Norfolk, Virginia and operations at locations throughout the United States.  
17 Relator is informed and believes that Maersk Line provides shipping services out of the port in  
18 Oakland, California.

19  
20 7. Defendant A.P. MOLLER - MAERSK GROUP ("A.P. Moller - Maersk") is a business  
21 organization of unknown type, which has offices throughout the United States, including San  
22 Francisco. Relator is informed and believes that, at all times relevant referenced herein, defendant  
23 Maersk Line was a wholly owned subsidiary of A.P. Moller - Maersk, that defendant Maersk Line  
24 was dominated and controlled by A.P. Moller - Maersk, and that A.P. Moller - Maersk authorized  
25 and approved the conduct by Maersk Line set forth herein



1            USC-03

2            12.     In or around February 2, 2001, the Department of Defense issued Solicitation No.  
3 DAMT01-00-R-0056. APL responded to the solicitation and, on or about September 1, 2001,  
4 entered into Contract No. DAMT01-01-D-0165 (hereinafter Contract No. 0165) with the Military  
5 Traffic Management Command ("MTMC"). (On January 1, 2004, MTMC changed its name to the  
6 Surface Deployment and Distribution Command ("SDDC"). The current acronym "SDDC" is used  
7 herein to refer to both MTMC and SDDC).  
8

9            13.     APL's Contract 0165 covered September 1, 2001 through August 31, 2002 and was later  
10 extended to February 28, 2003. The contract provided for the transportation of goods by APL on  
11 behalf of DoD to various locations around the world. Contract 0165 incorporated the terms of  
12 Universal Services Contract 03 ("USC-03"). USC-03 set forth, inter alia, the destinations to be  
13 served, the various services to be provided, and the rates applicable for certain services, including  
14 local transportation of containers.  
15

16            14.     On or about the same date that APL entered into Contract 0165, Maersk entered into the  
17 same basic contract with DoD, which also incorporated the terms of USC-03 and covered the same  
18 period of time, just under a different contract number.  
19

20            15.     Per the terms of USC-03, and modifications thereto, APL and Maersk agreed to deliver  
21 containers from various ports in the Middle East, Pakistan, and Afghanistan to inland locations at  
22 specified linehaul/drayage rates. These rates were designed to cover costs associated with the  
23 delivery of containers from ports of discharge to inland locations, with the possible exception of  
24 costs associated with port handling, port storage, and trailer detention.  
25

26            16.     The linehaul/drayage rates for deliveries from ports in Kuwait to destinations inside  
27  
28

1 Kuwait were set forth in Table 3E to USC-03 and initially ranged from \$115 to \$315.

2 17. Between approximately September 1, 2001 and February 28, 2003, APL and Maersk  
3 submitted or caused to be submitted invoices to SDDC for payment by the United States at the  
4 foregoing rates associated with their deliveries of cargo pursuant to USC-03. Included with the  
5 invoices submitted to the United States were Sea Waybills that generally identified the cargo  
6 transportation services provided and the rates charged for such services. APL's invoices were paid  
7 by the United States. Relator is informed and believes that Maersk's invoices were also paid by the  
8 United States.  
9

10 USC-04

11 18. In or around March 1, 2003, APL entered into Contract No. DAMT01-03-0129  
12 (hereinafter Contract 0129) with SDDC, pursuant to Solicitation Number DAMT01-02-R-0066. The  
13 contract, which incorporated the terms of Universal Services Contract 04, provided for "[o]cean and  
14 intermodal transportation services for all DoD shippers worldwide (container/breakbulk) for one year  
15 base period of performance 01 Mar03 thru 29Feb 04" and contained an option for "01Mar04 thru  
16 28Feb05." The contract set forth, inter alia, the destinations to be served, the various services to be  
17 provided, and the rate rules applicable for different services. The contract was extended pursuant to  
18 the option in the contract, then later extended again to August 2005 and again to December 2005.  
19

20 19. On or about the same date that APL entered into Contract 0129, Maersk entered into the  
21 same basic contract with DoD, which also incorporated the terms of USC-04 and covered the same  
22 period of time, just under a different contract number.  
23

24 20. Per the terms of USC-04, and modifications thereto, APL and Maersk agreed to deliver  
25 containers from various ports in the Middle East, Pakistan, and Afghanistan to inland locations at  
26  
27  
28



1 specified linehaul/drayage rates. These rates were intended to cover all costs associated with the  
2 deliveries, with the possible exception of port handling, port storage, and trailer detention charges.

3  
4 21. The linehaul rates for deliveries from ports in Kuwait to destinations inside Kuwait were  
5 set forth in Table 3E to USC-04 and initially ranged from \$115 to \$315, depending on the company,  
6 the size and type of container, and the destination within Kuwait. Between approximately March 1,  
7 2003 and the present, APL and Maersk have billed DoD at the rates associated with their deliveries  
8 of cargo pursuant to USC-04 and any modifications thereto. Included with the invoices submitted to  
9 the United States were Sea Waybills that generally identified the cargo transportation services  
10 provided and the rates charged for such services. APL's invoices were paid by the United States.  
11 Relator is informed and believes that Maersk's invoices were also paid by the United States.  
12

13 22. In or around March 16, 2003, APL's Contract 0129 was modified pursuant to its Changes  
14 Clause and Modification No. P00004 to incorporate certain "ongoing rates" into the contract. The  
15 effect of the modification was to increase the linehaul/drayage rates for certain point to port  
16 deliveries within Kuwait and also to increase the mileage rates for deliveries to destinations in  
17 Kuwait not otherwise specifically covered by the modification. The new rates under the  
18 modification ranged from \$1,030 to \$1,205, depending on the size of container and destination. For  
19 deliveries 0-50 miles to other locations, the mileage rates were set at \$1,115 for containers under 40  
20 feet and at \$1,205 for containers 40 feet and over. Additional amounts were to be paid for longer  
21 deliveries.  
22  
23

24 23. Between approximately March 2003 and January 2004, APL submitted or caused to be  
25 submitted invoices to SDDC for payment by DoD at the modified rates for deliveries of containers  
26 within Kuwait. Included with the invoices submitted to the United States were Sea Waybills that  
27

1 generally identified the transportation services provided and the rates charged for such services.  
2 These invoices were paid by the United States.

3 COORDINATION AMONG CARRIERS

4  
5 24. Since at least October 2003 and possibly earlier, APL and Maersk have engaged in a  
6 knowing and intentional practice of coordinating their billing practices with and amongst each other,  
7 with the manifest intention of not raising questions by DoD about such practices, including those  
8 described herein.

9  
10 25. Eileen Murphy, relator's immediate superior at APL, and others in APL's management  
11 have made repeated comments to Mr. Brown about the need to coordinate various specific charging  
12 practices with Maersk. Similar comments have been made to Mr. Brown by his superiors that  
13 indicate coordination of billing practices has routinely taken place amongst APL and Maersk.

14 DOUBLE-BILLING OF KTS CHARGES

15  
16 26. Beginning in November 2003 and continuing to at least January 2004, APL  
17 systematically billed SDDC directly for transportation-related charges that should already have been  
18 covered by the rates being paid to APL under Contracts 0165 and 0129. These double-billed charges  
19 covered the period of approximately August 2002 through December 2003 and were ultimately paid  
20 by DoD.

21  
22 27. The charges doubled-billed by APL were initially billed to APL by Kuwait  
23 Transcontinental Shipping ("KTS"). During all relevant periods referenced herein, KTS provided  
24 local ground transportation (linehaul/drayage) services on behalf of APL for containers delivered to  
25 Kuwait. The following items were included in KTS's charges to APL for its services: 1) Custom's  
26 Clearance, 2) Transport Charges, 3) Delivery Order Charge, 4) Port Gate Pass Charge, 5) Port  
27

1 Landing Charges, 6) Port Handling Charges, 7) Port Storage Charges, and 8) Trailer Detention  
2 Charges.

3  
4 28. Most, if not all, of the foregoing costs, however, were associated with the transportation  
5 of the cargo and thus were covered under the linehaul/drayage rates paid to APL under Contracts  
6 0165 and 0129 (or modifications thereto) and thus should not have been separately billed to DoD.

7  
8 29. In a May 18, 2003 e-mail regarding the KTS charges, APL Senior Finance Analyst Vivek  
9 Sathe stated “[a]ctually out of the above we should be reimbursed only towards” port handling, port  
10 storage, and trailer detention charges. In a June 17, 2003 e-mail on the same subject, Eric Mensing,  
11 APL’s Vice President of Government Markets, indicated his general agreement with Mr. Sathe’s  
12 conclusion, saying “[a]s discussed, many of these cannot be billed.”

13  
14 30. Despite the foregoing knowledge, APL has falsely billed DoD approximately \$2.2 million  
15 for KTS charges and has not provided a credit to DoD for those charges. Relator is informed and  
16 believes that, instead, APL has simply created a reserve line in its books to account for the possibility  
17 that some or all of the double billed amount would have to be repaid. Relator is informed and  
18 believes that APL also has other items on its reserve schedule that reflect additional improper  
19 charges to DoD.

20  
21 31. Like APL, Maersk has billed SDDC for the same KTS charges referred to above, which  
22 should properly have been covered by the linehaul/drayage rates already being paid to Maersk under  
23 the terms of USC-03 and USC-04. Relator is informed and believes that Maersk has followed this  
24 practice since at least August 2002 through the present.

25 REEFER MAINTENANCE AND PLUG-IN CHARGES

26  
27 32. Both USC-03 and USC-04 permitted APL and Maersk, under specified circumstances, to



1 charge SDDC a “reefer maintenance” charge to compensate them for expenses associated with  
2 operating (i.e., powering) refrigerated containers. This charge was permitted after seven days of  
3 “free time” that is supposed to commence when containers are available for delivery and/or  
4 unstuffing.  
5

6 33. Section 4.3.1.3.1 of both USC-03 and USC-04 states as follows: “When the return of  
7 refrigerated containers to the Carrier is delayed by the Government beyond the allowable free time,  
8 the carrier may assess a reefer maintenance charge in addition to those charges for container  
9 detention. The reefer maintenance charge shall be added to the per diem detention charge when, due  
10 to Government delay, the carrier incurs additional expenses in maintaining operation of those  
11 refrigerated containers so delayed. The Carrier will certify such charges to the Contracting Officer.”  
12

13 34. The contracts then identify two categories of rates - Column A and Column B rates. The  
14 Column A rate for containers “20 feet and over” is \$7.76 per 24 hour period or part thereof, the  
15 Column A rate for containers “40 feet and over” is \$11.21. The Column B rate for containers “20  
16 feet and over” is \$29.90 per 24 hour period or part thereof, and the Column B rate for containers “40  
17 feet and over” is \$43.70. Column A rates are appropriate “when refrigerated containers are delayed  
18 at those facilities where electrical power is available for direct connection to the Carrier’s container.”  
19 Column B rates are appropriate only “when refrigerated containers are delayed at those facilities  
20 where the Carrier is required to maintain operation of refrigerated containers without the use of  
21 electrical power.” See Section 4.3.1..3.1.  
22  
23

24 35. APL has charged reefer maintenance fees to SDDC at either Column A or B rates (after  
25 the expiration of “free time” as calculated by APL) for all containers delivered to the Middle East  
26 and Pakistan/Afghanistan between at least January 2003 and the present. These invoices have been  
27  
28

1 paid by SDDC through December 2004.

2 36. Maersk has similarly charged reefer maintenance charges to SDDC (after the expiration  
3 of "free time" as calculated by Maersk) for all containers delivered to the Middle East and  
4 Pakistan/Afghanistan between at least January 2003 and the present. Relator is informed and  
5 believes that these invoices have been paid by SDDC.  
6

7 Unsubstantiated Reefer Maintenance Charges

8 37. APL has assessed the foregoing reefer maintenance charges, despite lacking evidence, as  
9 required by the terms of USC-03 and USC-04, of having incurred actual operating expenses for most  
10 of the relevant containers for the periods charged. APL lacks such evidence, because most of the  
11 containers have either not been operated at APL's expense for the entire period billed or simply not  
12 been operated at all.  
13

14 38. Between at least January 2003 and the present, APL routinely and systematically charged  
15 reefer maintenance fees for containers held by DoD, despite the fact that DoD was paying for the  
16 power or fuel used to operate the refrigerated containers. Similarly, during the same period, APL  
17 routinely charged reefer maintenance fees to SDDC for containers in DoD's possession, without  
18 even verifying that the refrigeration equipment on the containers was being operated at all.  
19

20 39. Relator is informed and believes that APL knowingly billed SDDC in excess of \$6  
21 million in false claims pursuant to the foregoing scheme, and SDDC has paid the claims.  
22

23 40. Between at least January 2003 and the present, Maersk has also billed reefer maintenance  
24 to SDDC for containers held by DoD, despite the fact that DoD was paying for the power or fuel  
25 used to operate the refrigerated containers. Relator is informed and believes that, during the same  
26 period, Maersk routinely charged reefer maintenance fees to SDDC for containers in DoD's  
27

1 possession, without even verifying that the refrigeration equipment on the containers was being  
2 operated at all. The total amount of paid claims is unknown to relator but is estimated at more than  
3 \$10 million.  
4

5 Billing Incorrect Rate for Reefer Maintenance Charges in Pakistan/Afghanistan

6 41. As noted above, APL and Maersk lacked justification in many instances for the  
7 assessment of any reefer maintenance charges for containers delivered to the Middle East and  
8 Pakistan/Afghanistan between approximately January 2003 through the present. With respect to  
9 Pakistan and Afghanistan in particular, even in those cases where some charge was justified, the rate  
10 charged by APL and Maersk has also been falsely inflated.  
11

12 42. In Pakistan/Afghanistan, for the approximate period January 2003 through December  
13 2003, APL charged Column B rates to SDDC for all containers in Karachi, Pakistan (after the  
14 expiration of "free time" as calculated by APL), even if the containers were still at the Port and  
15 power was available to operate the refrigeration units on the containers.  
16

17 43. Since approximately January 2004 through the present, APL's practice has changed, and  
18 it has charged SDDC at Column A rates (after "free time") for containers at the Port in Karachi,  
19 Pakistan, and it has charged Column B rates for containers once they have left the Port for delivery  
20 to Afghanistan or elsewhere.  
21

22 44. The Column B rates charged by APL to SDDC for containers held at the Port in Karachi  
23 were excessive and false, for power was available to APL in Karachi to operate the refrigerated  
24 containers. These amount of these overcharges was calculated and acknowledged internally at APL,  
25 but they were not refunded to the Government.  
26

27 45. The Column B rates charged by APL to SDDC for containers after they left the Port in  
28

1 Karachi were also generally false, for the vast majority of refrigerated containers associated with the  
2 charges did not have generators (aka "Gensets") on them which could potentially justify the  
3 assessment of Column B rates for the operation of the containers. As just one example, in  
4 September 2003, DoD was in possession of 77 of APL's refrigerated containers in Khandahar,  
5 Afghanistan, but only ten of the containers had Gensets. Nonetheless, APL charged Column B reefer  
6 maintenance rates for all 77 containers for the entire period they were held by DoD.  
7

8 46. Relator is informed and believes that the vast majority of refrigerated containers delivered  
9 to Pakistan/Afghanistan by APL from January 2003 through the present did not have Gensets, yet  
10 they were billed to SDDC by APL at the rate for containers with such equipment, and SDDC paid  
11 the claims. The amount overcharged pursuant to this scheme will be established at trial.  
12

13 47. Relator is informed and believes that APL created a reserve on its books to account for  
14 the possibility that APL would be required to return funds to DoD as a result of APL charging  
15 excessive rates for reefer maintenance.  
16

17 48. Like APL, Maersk charged DoD at Column B rates for most, if not all, of the refrigerated  
18 containers delivered to Pakistan/Afghanistan by Maersk. Relator is informed and believes that this  
19 practice began in approximately January 2003 (and perhaps earlier) and has continued through the  
20 present. Maersk has charged Column B rates from at least the expiration of the freetime period up  
21 through the date that the containers have been returned to Maersk. These rates have been charged  
22 even when containers have been in the Government's possession, and the Government has been  
23 paying to power the containers at its own facility. Relator is informed and believes that Maersk has  
24 also, at times, charged Column B rates, after the expiration of freetime, even when containers were at  
25 port and power was available to plug-in the containers.  
26  
27

1     Double-Billing Plug-In Charges

2     49.     In those cases where APL has actually incurred a “plug-in” charge for the operation of a  
3 container, it has double-billed that amount to DoD.

4     50.     For example, when APL incurred a “plug-in charge” in connection with containers  
5 discharged at the port in Karachi, Pakistan between January 2003 and the present, it subsequently  
6 billed DoD directly for the cost of that expense. But, under the terms of Contracts 0129 and 0165,  
7 any such charges should already have been covered by the reefer maintenance rates also being billed  
8 by APL, for those rates were explicitly intended to compensate APL for the costs (such as plug-in  
9 charges) of operating the containers.  
10

11     51.     The total amount double-billed by APL for plug-in charges at the Karachi Port for the  
12 period January 2003 through December 2004 is approximately \$6.15 million.  
13

14     52.     Relator is informed and believes that Maersk has followed the same practice of billing  
15 DoD for “plug-in” charges as described above between January 2003 and the present. The exact  
16 amount of such charges is unknown to relator but is estimated to be in excess of \$5 million.  
17

18     Excessive Plug-In Charges

19     53.     In addition to double-billing for plug-in charges as described above, APL has also  
20 charged SDDC a higher amount for the plug-in charges in Karachi, Pakistan than the charges it was  
21 actually assessed by the port.  
22

23     54.     For the period of approximately January 2003 through the present, APL has charged  
24 SDDC \$60 per day for plug-in charges associated with the containers in Karachi, but that is not the  
25 rate that APL has paid. APL has negotiated a discount with the Port that allows it to pay a reduced  
26 rate (which may be as low as zero) based on the total number of containers (both military and  
27



1 commercial) on a particular vessel. This discount has not been passed on to SDDC. The amount  
2 overcharged pursuant to this scheme will be established at trial.

3  
4 FREE TIME

5 55. APL and Maersk were entitled under USC-03 and USC-04 to charge detention and reefer  
6 maintenance under specified circumstances in connection with particular containers only after a  
7 period of "freetime" associated with each particular container had ended.

8 56. Both USC-03 and USC-04 contain specific provisions that define the concept of  
9 "Freetime."

10  
11 57. Section 4.3.1.3.1 states as follows: "Performance Objective No. 35 – The contractor  
12 must provide 7 days freetime, excluding Saturdays/Sundays and holidays form containers/chassis  
13 except as indicated below. Freetime will run for any delays caused by the Government. Freetime  
14 will commence at 0001 hours on the first working day the container is available for delivery and/or  
15 unstuffing. When freetime is exceeded, contractors will be paid at detention rates and for reefer  
16 maintenance as stated below."

17  
18 58. Containers are not "available for delivery and/or unstuffing" until at least after they have  
19 been customs cleared or later (e.g., when APL was able to deliver the containers). Nonetheless,  
20 despite the foregoing clear contract language, during the time-frame covered by USC-03 and USC-  
21 04 (i.e., approximately September 2001 through the present), APL has not commenced its  
22 calculation of freetime at the point when containers have cleared customs or later. APL has  
23 commenced its calculation of "freetime" upon the date that containers have been discharged from  
24 arriving vessels, regardless of whether the Government caused the delay. This practice is  
25 inconsistent with how APL has calculated freetime for deliveries on behalf of DoD to the United  
26  
27  
28

1 States. In this, and other contexts, APL has demonstrated a knowledge of how to calculate freetime  
2 correctly but has simply not done so in connection with deliveries to the Middle East, Afghanistan,  
3 Pakistan, and possibly elsewhere.  
4

5 59. The consequence of APL starting the calculation of freetime from the date of discharge  
6 has been to increase the amount it has been able to charge DoD for detention and reefer maintenance.

7 60. The exact increase in the amount billed by APL to DoD for detention and reefer  
8 maintenance as a result of APL's knowingly incorrect calculation of "freetime" is presently unknown  
9 to relator but is presently estimated to be in excess of \$10 million.  
10

11 61. Maersk has followed the same practice described above with respect to its method of  
12 calculating free time. It also has started the calculation of freetime from the date of discharge, in  
13 knowing violation of the terms of the contract. In addition, though, Maersk has also knowingly  
14 miscalculated freetime by failing to exclude all Saturdays, Sundays and holidays from the calculation  
15 of freetime, as required by the contract. Maersk has systematically provided eight days of freetime,  
16 which is less than the amount required by the contract. Relator is informed and believes that Maersk  
17 has followed the foregoing practices during the time period covered by USC-03 and USC-04 and that  
18 the damages resulting from this practice are in excess of \$10 million.  
19

#### 20 OVERPAYMENTS

21  
22 62. In or around May and June 2004, APL submitted non-final versions of its invoices for  
23 services to SDDC for March and April 2004, respectively, then later submitted final versions of the  
24 same invoices, but SDDC processed the non-final versions of the invoices. The result was that APL  
25 was overpaid by a total of \$861,896.87 (\$1,085,072.00 - \$223,175.13 withheld by SDDC) for March  
26 and April 2004. An additional overpayment of \$162,546.62 was made by SDDC for May 2004. All  
27  
28

1 three overpayments are known to APL management, but APL has not advised the Government of the  
2 overpayments, reimbursed the funds, or credited the funds to date.

3  
4 COUNT I

(Submission of False Claims in Violation of 31 U.S.C. § 3729(a)(1))  
5 (All Defendants)

6 63. Relator realleges and incorporates paragraphs 1 through 62 as if fully set forth herein.

7 64. In engaging in the conduct described herein, defendants have knowingly submitted, or  
8 caused to be submitted to DoD claims for payment which were false.

9 65. Defendants thus knowingly caused the submission of false claims to the United States in  
10 violation of the False Claims Act. The United States was damaged by such false claims in an exact  
11 amount to be established at trial.

12  
13 COUNT II

(Use of False Statements or Records or Statements  
14 in Violation of 31 U.S.C. § 3729(a)(2))  
15 (All Defendants)

16 66. Relator realleges and incorporates paragraphs 1 through 62 as if fully set forth herein.

17 67. In engaging in the conduct described above, defendants knowingly participated in the  
18 submission of false records and/or statements to the United States regarding services, the cost of  
19 services being provided by defendants to DoD, and the allowability of costs submitted to DoD.

20 68. Defendants thus knowingly used false records or statements to get false or fraudulent  
21 claims paid or approved by the United States in violation of the False Claims Act. The United States  
22 was damaged by such false claims in an exact amount to be established at trial.  
23  
24  
25  
26  
27  
28

COUNT III

(Reverse False Claims - 31 U.S.C. § 3729(a)(7))  
(All Defendants)

1  
2  
3 69. Relator realleges and incorporates paragraphs 1 through 62 as if fully set forth herein.

4  
5 70. By engaging in the conduct described above, defendants avoided or reduced obligations  
6 owed to the United States.

7 71. When seeking additional payments from DoD, following the improper receipt of funds  
8 described above, defendants knowingly concealed information concerning the offsetting  
9 reimbursements that were owed to DoD and thus reduced defendants' obligation to the United  
10 States.

11  
12 72. Defendants thus knowingly used false records or statements to reduce or avoid an  
13 obligation to pay the United States in violation of the False Claims Act. The United States was  
14 damaged by such false claims in an exact amount to be established at trial.

COUNT VI

(Conspiracy to Get False Claims Paid - 31 U.S.C. § 3729(a)(3))  
(All Defendants)

15  
16  
17  
18 73. Relator realleges and incorporates paragraphs 1 through 62 as if fully set forth herein.

19 74. Between at least 2003 and the present, APL and Maersk individually and collectively  
20 agreed amongst themselves to follow consistent billing practices with DoD so as not to draw  
21 individual attention to any unlawful practices, and they have maintained consistent practices  
22 pursuant to this agreement. The practices APL and Maersk agreed upon are as set forth herein.

23  
24 75. Defendants thus knowingly conspired to defraud the United States by getting false claims  
25 paid in violation of the False Claims Act. The exact amount of the United States' harm has not yet  
26 been determined. The precise amount of damages will be ascertained at trial.

1 WHEREFORE, plaintiffs/relator pray for judgment against defendants as follows:

2 1. On Count I (Submission of False Claims), an order holding each of the defendants  
3 individually and jointly liable for treble the single damages, to be established at trial, that they or  
4 their affiliated entities caused, penalties of \$11,000 for each false claim, the number of which is to be  
5 established at trial, plus such other relief as this Court deems just and appropriate.  
6

7 2. On Count II (Use of False Statements or Records), an order holding each of the defendants  
8 individually and jointly liable for treble the single damages, to be established at trial, that they or  
9 their affiliated entities caused, penalties of \$11,000 for each false statement or record, the number of  
10 which is to be established at trial, plus such other relief as this Court deems just and appropriate.  
11

12 3. On Count III (Reverse False Claims), an order holding each of the defendants individually  
13 and jointly liable for treble the single damages, to be established at trial, that they or their affiliated  
14 entities caused, penalties of \$11,000 for each false statement or record, the number of which is to be  
15 established at trial, plus such other relief as this Court deems just and appropriate.  
16

17 4. On Count IV (Conspiracy to Submit False Claims), an order holding each of the defendants  
18 individually and jointly liable for treble the single damages, to be established at trial, that they or  
19 their affiliated entities caused, penalties of \$11,000 for each false statement or record, the number of  
20 which is to be established at trial, plus such other relief as this Court deems just and appropriate.  
21

22 5. For the payment of reasonable attorney's fees, costs, and expenses per the False Claims Act.

23 Dated: September 2, 2005

LAW OFFICES OF PAUL D. SCOTT

24  
25 BY:

  
26 PAUL D. SCOTT  
27 Attorney for Relator Brown  
28



JURY DEMAND

Relator Brown hereby demands trial by jury.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PROOF OF SERVICE BY MAIL AND HAND-DELIVERY**

I, the undersigned, declare:

I am over the age of 18 and not a party to this cause. I am employed in the City and County of San Francisco. My business address is 201 Filbert Street, Suite 401, San Francisco, California 94133.

On the date set forth below, I caused to be served a copy of the attached **FIRST-AMENDED COMPLAINT AND JURY DEMAND** on the United States, by causing true and correct copies thereof to be sent in envelopes on **September 2, 2005** by mail to:

David T. Cohen  
Civil Fraud Section  
U.S. Department of Justice  
601 D Street, N.W.  
Patrick Henry Building  
Washington, D.C. 20004

and by hand-delivery to:

Mr. Steven J. Saltiel  
Assistant United States Attorney  
U.S. Attorney's Office  
450 Golden Gate Avenue  
San Francisco, California 94102.

I declare under penalty of perjury of the laws of the laws of the United States that the foregoing is true and correct. Executed on **September 2, 2005** at San Francisco, California.

