

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

<b>UNITED STATES OF AMERICA,</b>	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>CIVIL ACTION NO. 09-00621-KD-C</b>
	)	
<b>AJB, Limited Liability Company, et al,</b>	)	
<b>Defendants.</b>	)	

**ORDER**

This matter is before the Court on review of the Magistrate Judge’s Report and Recommendation (Doc. 44) concerning Defendants’ Motion to Dismiss Count II and/or Motion on the Pleadings as to Count II and supporting brief (Docs. 38, 39), and Defendants’ Statement of Objection to same (Doc. 47).

The Defendants take issue with the Magistrate Judge’s determination that the allegations in the Complaint “are sufficient to defeat Defendants’ ‘opinion’ argument.” Specifically, Defendants argue that if the letter was an opinion it can not form the basis of a False Claims Act violation. The Defendants continue with their objection by pointing to a subsequent communication with Plaintiff that they contend supports their position that the original letter was merely an opinion and not a claim.

The issue of whether the letter constitutes a knowingly false claim, or “a good faith attempt to continue through the redemption process” is an issue of fact and is not properly resolved on a motion to dismiss.

Accordingly, after due and proper consideration of all portions of this file deemed relevant to the issues raised, and a *de novo* determination of those portions of the recommendation to which objection is made, the Magistrate Judge's recommendation to deny the motion to dismiss is **ADOPTED** as the opinion of this Court.

**DONE and ORDERED** this the 17<sup>th</sup> day of **September 2010**.

/s/ Kristi K. DuBose  
**KRISTI K. DUBOSE**  
**UNITED STATES DISTRICT JUDGE**