

1 **BACKGROUND**

2 **I. Statutory and Regulatory Background**

3 Relator generally alleges that, between August 9, 2009, and December 10, 2015 (the
4 “relevant time period”), Defendants falsely represented that GET was a Women-Owned
5 Small Business (“WOSB”) to obtain contracts with the federal government and prime
6 contractors to which it was not entitled. (*See generally* ECF No. 1 (“Compl.”).) Although
7 not provided by the Parties, an overview of the statutory and regulatory framework
8 incentivizing procurement contracts with WOSBs is critical to understanding Relator’s
9 claims and the Parties’ arguments.

10 Congress enacted the Small Business Act of 1953 with “the declared policy . . . that
11 the Government should aid, counsel, assist, and protect, insofar as is possible, the interests
12 of small-business concerns in order to preserve free competitive enterprise . . . and to
13 maintain and strengthen the overall economy of the Nation.” *See* PL 83-163 § 202, 67 Stat.
14 230, 232 (codified as amended at 15 U.S.C. § 631(a)). One of the means identified by
15 Congress was “to insure that a fair proportion of the total purchases and contracts or
16 subcontracts for supplies and services for the Government be placed with small-business
17 enterprises.” *See id.* To carry out its identified policies, Congress created the Small
18 Business Administration (“SBA”). *See* PL 83-163 § 204(a), 67 Stat. 230, 233 (codified at
19 15 U.S.C. § 633(a)).

20 In 1978, Congress enacted a policy to ensure greater participation of small
21 businesses in federal procurement contracts by establishing annual goals for the percentage
22 of the total value of all prime and subcontract awards. *See* Act to Amend the Small
23 Business Act and the Small Business Investment Act of 1958, PL 95-507, 92 Stat. 1757
24 (1978) (codified at 15 U.S.C. § 644(g)). In 1994, Congress added an annual five-percent
25 goal for small business concerns owned and controlled by women (the “WOSB Goal”).
26 *See* Federal Acquisition Streamlining Act of 1994 (“FASA”), PL 103-355 § 7106, 108 Stat.
27 3243, 369 (codified as amended at 15 U.S.C. § 644(g)(1)(A)(v) (“The Governmentwide
28 goal for participation by small business concerns owned and controlled by women shall be

1 established at not less than 5 percent of the total value of all prime contract and subcontract
2 awards for each fiscal year.”)). For purposes of FASA, Congress defined “a small business
3 concern owned and controlled by women” as requiring “(1) at least 51 percent of [the]
4 small business concern is owned by one or more women or, in the case of any publicly
5 owned business, at least 51 percent of the stock of which is owned by one or more women;
6 and (2) the management and daily business operations of the business are controlled by
7 one or more women.” *Id.* (codified at 15 U.S.C. § 632(n)).

8 “The [WOSB G]oal was implemented by procurement regulations effective in fiscal
9 year 1996[,]” *see* United States General Accounting Office, GAO-01-346, Federal
10 Procurement: Trends and Challenges in Contracting With Women-Owned Small
11 Businesses 8 (2001), <https://www.gao.gov/assets/gao-01-346.pdf>; *see also, e.g.*, Federal
12 Acquisition Regulation; Small Business, 60 Fed. Reg. 48258-02, 48261 (Sept. 18, 1995)
13 (to be codified at 48 C.F.R. § 19.202-5), and the legislative history of FASA “indicated
14 that the 5-percent [WOSB G]oal was not intended to create a new set-aside or program of
15 restricted competition for WOSBs.” *See* GAO-01-346 at 8; *see also* United States
16 Government Accountability Office, GAO-19-168, Women-Owned Small Business
17 Program: Actions Needed to Address Ongoing Oversight Issues 26 (2019), [https://www.](https://www.gao.gov/assets/gao-19-168.pdf)
18 [gao.gov/assets/gao-19-168.pdf](https://www.gao.gov/assets/gao-19-168.pdf) (“Federal dollars obligated for contracts to all women-
19 owned small businesses . . . include contracts for any type of good or service awarded under
20 the WOSB program, under other federal programs, or through full and open competition.”).
21 Although the general twenty-three percent procurement goal for all types of small
22 businesses has been met consistently since Fiscal Year 2013, the WOSB Goal has only
23 been achieved twice, in Fiscal Years 2015 and 2019. *See* Robert Jay Dilger, Cong. Rsch.
24 Serv., R46322, SBA Women-Owned Small Business Federal Contracting Program 8–9
25 (2021).

26 Another means Congress has used to help small businesses receive a fair proportion
27 of federal contracts and subcontracts are various contracting preferences, such as
28 “restricted competitions (set-asides), sole source awards, and price evaluation

1 adjustment/preference in unrestricted competitions[.]” *See id.* at 1; *see also id.* at 10 &
2 n.30 (discussing programs available to small businesses owned and controlled by socially
3 and economically disadvantaged individuals and small businesses located in historically
4 underutilized business zones). Slow progress in achieving the five-percent WOSB Goal
5 led some to advocate for the creation of a new set-aside program for WOSBs (the “WOSB
6 Program”). *See id.* at 10. Accordingly, the WOSB Program was authorized by the Equity
7 in Contracting for Women Act of 2000, H.R. 4897, 106th Cong. (2000), which was
8 incorporated into the Small Business Reauthorization Act of 2000, itself enacted within the
9 Consolidated Appropriations Act, 2001. PL 106-554, 114 Stat. 2763 (codified as amended
10 at 15 U.S.C. §§ 647g, 657d–657e).

11 The WOSB Program “authorizes the contracting officers to restrict competition to
12 eligible . . . WOSBs for federal contracts in industries in which the SBA determines that
13 women-owned small businesses are underrepresented or substantially underrepresented in
14 federal procurement.” *See* Anna S. Molina, *The Sisyphean Course of Combating Gender*
15 *Discrimination in the Federal Marketplace for Prime Contracts: Rolling the Boulder of*
16 *Small Business Size*, 22 *Cardozo J.L. & Gender* 109, 126 (2015); *see also* 48 C.F.R. § 2.101
17 (eff. Apr. 1, 2011) (“Women–Owned Small Business (WOSB) Program means a program
18 that authorizes contracting officers to limit competition, including award on a sole source
19 basis, to . . . WOSB concerns eligible under the WOSB Program for Federal contracts
20 assigned a NAICS code in an industry in which SBA has determined that WOSB concerns
21 are substantially underrepresented in Federal procurement.”). For purposes of the WOSB
22 Program, “[t]he term ‘small business concern owned and controlled by women’ has the
23 meaning given such term in section 632(n) of this title, except that ownership shall be
24 determined without regard to any community property law.” § 811, 114 Stat. 2763
25 (codified at 15 U.S.C. § 637(m)(1)(B)). The statute allowed “a contracting officer [to]
26 restrict competition for any contract for the procurement of goods or services by the Federal
27 Government to small business concerns owned and controlled by women” under certain
28 circumstances, *see id.* (codified at 15 U.S.C. § 637(m)(2)), and required the SBA

1 Administrator to “establish procedures” to verify eligibility for the WOSB Program. *See*
2 *id.* (codified at 15 U.S.C. § 637(m)(5)).

3 “[T]he WOSB [P]rogram’s implementation was delayed for over 10 years, primarily
4 due to the SBA’s difficulty in identifying an appropriate methodology to determine ‘the
5 industries in which WOSBs are underrepresented (and, by inference, substantially
6 underrepresented) with respect to federal procurement contracting.’” Dilger, *supra*, at 14.
7 On October 7, 2010, the SBA finally implemented regulations effectuating the WOSB
8 Program. *See Women-Owned Small Business Federal Contract Program*, 75 Fed. Reg.
9 62258-01, 62282–91 (Oct. 7, 2010) (to be codified at 13 C.F.R. §§ 127.100–127.700).
10 Among other things, these regulations provided the requirements to qualify as a WOSB for
11 purposes of the WOSB Program, *see* 13 C.F.R. §§ 127.200–127.203, and the requirements
12 for certification of WOSB status for purposes of the WOSB Program. *See* 13 C.F.R.
13 §§ 127.300–127.305.

14 The Federal Acquisition Regulation (“FAR”) amended its definition of WOSB in
15 2011, distinguishing between those entities eligible for inclusion in the WOSB Goal as
16 opposed to those eligible for the WOSB Program:

17 Women-owned small business concern means—

18 (1) A small business concern—

19 (i) That is at least 51 percent owned by one or more women; or, in the case
20 of any publicly owned business, at least 51 percent of the stock of which
21 is owned by one or more women; and

22 (ii) Whose management and daily business operations are controlled by
23 one or more women; or

24 (2) A small business concern eligible under the Women-Owned Small Business
25 Program in accordance with 13 CFR part 127 (see subpart 19.15).

26 48 C.F.R. § 2.101. Further, the SBA recently clarified that “[a] concern must be certified
27 as a WOSB . . . pursuant to § 127.300 in order to be awarded a WOSB . . . set-aside or sole-
28 source contract,” *see* 13 C.F.R. § 127.200(c)(1), but that “[o]ther women-owned small

1 business concerns that do not seek WOSB . . . set-aside or sole-source contracts may
2 continue to self-certify their status, receive contract awards outside the Program, and count
3 toward an agency’s goal for awards to WOSBs.” *See* 13 C.F.R. § 127.200(c)(2).

4 **II. Undisputed Material Facts**

5 The Parties have agreed to the following undisputed material facts:

6 “GET’s ownership split of 51% Guille Tuttle, and 49% to her husband Rodney Tuttle
7 has remained unchanged since 1982, with no other owners or shareholders.” (ECF No.
8 109 (“Jt. Stmt.”) ¶ 1.) “From the mid-1980s to present GET was located at 9350 Bond
9 Avenue, El Cajon, California.” (*Id.* ¶ 2.) “Between August 9, 2009 to December 10, 2015,
10 GET supplied tactical data equipment and interfaces to the Navy and prime government
11 contractors such as Raytheon Company, Northrop Grumman, Lockheed Martin, and DRS
12 Laurel Technologies, among others.” (*Id.* ¶ 3.)

13 “Between August 9, 2009[,] to December 10, 2015, GET had officer positions of
14 CEO/President, Vice President, Chief Financial Officer, Treasurer and Secretary.” (*Id.*
15 ¶ 14.) “Sometime in 1997, Mrs. Tuttle was no longer CEO due to health issues associated
16 with lupus.” (*Id.* ¶ 7.) Accordingly, “[s]tarting sometime in 1997, men served as GET’s
17 CEO until December 10, 2015.” (*See id.* ¶ 9; *see also id.* ¶ 10.) “After Mrs. Tuttle was no
18 longer CEO sometime in 1997, GET hired Bob Ruhe to succeed her as CEO, and he served
19 as CEO from sometime in 1997 to sometime in 2003.” (*Id.* ¶ 8.) “On December 1, 2003,
20 GET hired Greg MacNeil to serve as both its President and CEO.” (*Id.* ¶ 11; *see also id.*
21 ¶ 13.) “During Mr. MacNeil’s employment with GET from December 1, 2003[,] to
22 January 3, 2012[,] GET’s filings with the California Secretary of State identified Mr.
23 MacNeil as its President and CEO.” (*Id.* ¶ 12.) “On January 3, 2012, GET appointed
24 David Grundies, who was then serving as Vice President and reporting to Mr. MacNeil, to
25 succeed Mr. MacNeil as President and CEO.” (*Id.* ¶ 16.)

26 “In December of 1986, GET hired [Ms.] Leslie Adams[,] who worked for GET for
27 35 years straight.” (*Id.* ¶ 4.) “GET hired Ms. Adams approximately three years after she
28 graduated from high school.” (*Id.* ¶ 5.) “Ms. Adams does not have a college degree.” (*Id.*

1 ¶ 6.) “Between August 9, 2009[,] to December 10, 2015, GET’s then serving male CEOs
2 conducted the performance reviews of Ms. Adams.” (*Id.* ¶ 15.)

3 “On or about August 9, 2009, GET represented to the U.S. Government and prime
4 contractors that it was a WOSB, as defined by FAR 2.101.” (*Id.* ¶ 17.) “Mr. MacNeil, as
5 CEO, and Ms. Adams, as General Manager, made the initial decision to hold GET out as a
6 WOSB.” (*Id.* ¶ 19.) “On August 31, 2009, GET’s then CEO, Mr. MacNeil, informed
7 GET’s Board of Directors during his presentation to the Board that ‘GET announced to our
8 customers that we are now a Small Business, Woman-Owned Corporation as defined by
9 the United States Federal Acquisitions Regulations (FAR) 2.101.’” (*Id.* ¶ 20.)
10 Accordingly, “GET represented itself as a WOSB on its website from August 9, 2009[,] to
11 December 10, 2015.” (*See id.* ¶ 21.) “At the time the decision was made to hold GET out
12 as a WOSB, Mr. Tuttle and Mrs. Tuttle were both members of the Board of Directors.”
13 (*Id.* ¶ 22.)

14 “As part of the representations and certifications that GET submitted to the federal
15 Government, Leslie Adams certified on behalf of GET that:

16 ‘I have read each of the FAR and DFARS provisions presented below. By
17 submitting this certification I, Leslie Adams, am attesting to the accuracy of
18 the representations and certifications contained herein, including the entire
19 NAICS table. I understand that I may be subject to penalties if I misrepresent
20 Get Engineering Corp. in any of the below representations or certifications to
the Government.’”

21 (*Id.* ¶ 23.) “On March 28, 2012, Ms. Adams, on behalf of GET, inquired informally via e-
22 mail with the [Small Business Administration (“SBA”)] regarding the WOSB subject.
23 Specifically, Ms. Adams wrote Ms. Rosa Rodarte and stated:

24 ‘Our company has been in business for 30 years and we are a Women Owned
25 Small Business in El Cajon. For many years we have been registered on the
26 Government Central Contracting Registrations (CCR) and ORCA as a
27 Women Owned Small Business and recently a SBA form 2413 has been
28 brought to our attention which is I believe . . . the form needed for WOSB
Program Certification. On that form it asks if we have been certified by the

1 SBA as a WOSB. Is that a step that we should be doing before filling out this
2 form and if so how do we go about getting certified by the SBA?”

3 (*Id.* ¶ 24.) Additionally, “[i]n or around June, 2012, GET had communications with [the
4 Procurement Technical Assistance Centers (“PTAC”)] about the WOSB Program through
5 the SBA.” (*See id.* ¶ 25.) “After the meeting with PTAC, Mr. MacNeil stated in a
6 companywide email:

7 ‘It was obvious that he [PTAC] became somewhat confused about how we fit
8 inside the new rules. After further discussion he advised us to go direct to the
9 SBA who were the people that sent us to PTAC. Something like a circle game.

10 We will continue to operate as a WOSB until we get further clarity on how to
11 get through this third party certification. We have never applied for or won a
12 WOSB set aside since most of those go to service[-]oriented companies rather
than manufacturers like GET.”

13 (*Id.* ¶ 26 (first alteration in original).)

14 “After meeting with PTAC, Mr. MacNeil decided to continue to operate as a WOSB
15 until they got further clarity on how to get through third party certification as a WOSB.”

16 (*Id.* ¶ 27.) “Following the discussion with PTAC in June of 2012, GET did not approach
17 the SBA to inquire into the issues further and continued representing that GET was a
18 WOSB to the Government and prime contractors.” (*Id.* ¶ 28.) “Ms. Adams put the
19 concerns regarding GET’s WOSB status on the ‘back burner’ because Mr. MacNeil
20 became ill.” (*Id.* ¶ 29.)

21 “On November 17, 2015, the SBA notified GET that the agency would ‘be
22 performing an Eligibility Examination on [GET] to verify its status as a Women-Owned
23 Small Business’” (*Id.* ¶ 30 (alterations in original).) “On November 18, 2015, Leslie
24 Adams emailed Joshua Waddell, GET’s IT manager, and asked him to change GET’s
25 website from ‘GET is a Woman Owned Small Business (WOSB)’ to ‘GET is a Small
26 Business Woman Owned’” (*Id.* ¶ 31 (alterations in original).) “On December 10,
27 2015, GET terminated Mr. Grundies’ employment.” (*Id.* ¶ 32.)

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1 Although the relevant time period ends December 10, 2015, (*see* ECF No. 102-1
2 (“Def’s.’ Mem.”) at 1), the Parties also agreed to the following undisputed facts, which the
3 Court includes for the sake of completeness:

4 “On December 28, 2015, GET amended its corporate filing with the California
5 Secretary of State and listed Mrs. Tuttle as the CEO.” (*Id.* ¶ 33.) “GET unchecked the box
6 that it was a WOSB on [the United States’ System for Award Management (“SAM”)] as
7 of January 19, 2016 (available at www.sam.gov.)” (*Id.* ¶ 18; *see also id.* ¶ 34.) “On
8 June 17, 2016, one of GET’s prime contractor customers, AMSEC Huntington Ingalls,
9 acting through employee Turin Pollard, identified the change in GET’s status on SAM and
10 emailed Leslie Adams stating that GET’s ‘attachment [GET Corporate Capabilities sheet]
11 lists GET Engineering as a WOSB, however your SAM.Gov profile doesn’t have that
12 checked. Which is correct?’” (*Id.* ¶ 35 (alteration in original).) “On the same day,
13 Ms. Adams responded that ‘[u]p until a few months ago we did not meet the Small Business
14 Administration WOSB definition needed to be self-certified. Only recently did that change
15 because Mrs. Guille Tuttle, the majority stockholder of our company is now interim CEO.
16 Until the decision on that position is made we are holding off on filing the paperwork and
17 can only state that we are a Small Business Women Owned.’” (*Id.* ¶ 36.) “On June 17,
18 2016, Mr. Pollard responded and stated that ‘We’re going to have to list you as an SM for
19 the prop, unless you decide to change your certification before we submit. That said, please
20 let us know as soon as you do change it, so we can track out socio-economic groups after
21 award.’” (*Id.* ¶ 37.)

22 “On September 28, 2016, James Burgess, Administrative Project Manager at DDL
23 OMNI Engineering LLC, one of GET’s customers, emailed Leslie Adams and stated ‘[t]he
24 questionnaire that was filled out [for DDL OMNI Engineering LLC] indicated that you are
25 a Women-Owned Small Business but the FAR&DFARS report on SAM.GOV report
26 indicates you are not. . . . In order to ensure our records are correct, please clarify the
27 discrepancy between the two.’” (*Id.* ¶ 38 (alterations in original).) “That same day, Ms.
28 Adams responded, ‘[t]he majority owned Shareholder and interim CEO is a woman so we

1 consider ourselves a Small Business Women Owned. To meet the Small Business
2 definition of Woman Owned Small Business (WOSB) and be certified ‘the Woman’ must
3 run the same day to day operations which is what we currently are doing. The reason we
4 have not applied to be self-certified with SBA is because our CEO is only interim and we
5 aren’t sure if the CEO position will be held by another man or woman so we haven’t
6 proceeded with a change.” (*Id.* ¶ 39 (alterations in original).)

7 “On October 5, 2016, IXI submitted a supplemental disclosure to the Navy.” (*Id.*
8 ¶ 40.) “On November 15, 2016, IXI, through counsel, met with representatives of the Navy
9 to provide information regarding GET’s claimed WOSB status.” (*Id.* ¶ 41.) “On
10 November 21, 2016, GET changed its SAM representation to represent and certify that it
11 was a WOSB.” (*Id.* ¶ 42.) “On December 22, 2016, IXI, through counsel, notified the
12 Navy that GET had ‘changed its SAM certification, yet again, this time certifying that it is
13 a WOSB.’” (*Id.* ¶ 43.)

14 “On January 13, 2017, the Navy issued GET a ‘Show Cause’ Letter indicating that
15 the Navy was considering taking administrative action, including suspension and
16 debarment, under FAR Subpart 9.4 regarding its use of the WOSB designation.” (*Id.* ¶ 44.)
17 “The letter from the Navy’s SDO stated: ‘Given the special consideration in the Federal
18 contracting award process that comes with WOSB status, I am concerned with GET’s
19 relatively frequent changes in WOSB status over the previous three years.’” (*Id.* ¶ 45.)
20 “The Navy letter further asked GET to address the following questions:

21 (1) Clarify if GET is currently a WOSB as defined in 13 C.F.R. 127 and
22 explain GET’s rationale for claiming WOSB status.

23 . . .

24 (7) Address when and why GET’s website was updated from Woman
25 Owned Small Business (WOSB) to Small Business Woman Owned.”

26 (*Id.* ¶ 46 (alterations in original and internal quotation marks omitted).)

27 “A meeting was held between GET and Navy officials on April 11, 2017.” (*Id.*
28 ¶ 47.) “On April 14, 2017, the Navy issued a ‘Follow-Up’ letter to GET[,]” (*id.* ¶ 48), and

1 “determined that GET was not eligible to claim the WOSB designation.” (*Id.* ¶ 49.) “As
2 part of the Navy’s determination and directed corrective actions, GET was required to
3 cease use of the WOSB designation and to notify all of its active customers that it was not
4 a WOSB.” (*Id.* ¶ 50.)

5 “In mid-2017, GET changed its website to state ‘GET is a Small Business . . .’ and
6 removed verbiage that stated ‘GET is a Small Business Woman Owned.’” (*Id.* ¶ 51
7 (alteration in original).) “On or around May 8, 2017, GET changed its SAM representation
8 to state that it was not a WOSB.” (*Id.* ¶ 52.)

9 **III. Relevant Procedural History**

10 Relator initiated this action on February 16, 2018, by filing this *qui tam* action *in*
11 *camera* and under seal against Defendants—including, at that time, Mrs. Tuttle—in the
12 United States District Court for the Central District of California. (*See generally* ECF No.
13 1.) Relator’s initial and operative Complaint alleged three causes of action for violations
14 of section 3729 of the False Claims Act (“FCA”), 31 U.S.C. §§ 3729–3733, for
15 (1) presentation of false claims under section 3729(a)(1)(A), (2) making or using a false
16 record or statement under section 3729(a)(1)(B), and (3) conspiracy under section
17 3729(a)(1)(C), as well as a fourth cause of action for violation of sections 1833(a) and
18 (c)(3) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989
19 (“FIRREA”), Pub. L. No. 101-73, 103 Stat. 183 (1989) (codified at various sections of 12
20 and 15 U.S.C.). (*See generally* ECF No. 1.)

21 After the United States declined to intervene, (*see generally* ECF No. 12), the
22 Honorable Josephine L. Staton unsealed the action and ordered Relator to serve its
23 Complaint on Defendants. (*See generally* ECF No. 13.) On May 8, 2019, Defendants
24 moved to transfer this action to this District. (*See generally* ECF No. 39.) Judge Stanton
25 granted Defendants’ motion on June 20, 2019, (*see generally* ECF No. 42), following
26 which this action was transferred to this District and assigned to the Honorable Larry Alan
27 Burns. (*See generally* ECF Nos. 43, 44.)

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1 Defendants answered Plaintiff’s Complaint on July 22, 2019, (*see generally* ECF
2 No. 46), at which point the Parties proceeded to engage in discovery. (*See generally* ECF
3 No. 48.) Defendants informed the Court on February 24, 2020, that Mrs. Tuttle had passed
4 away, (*see generally* ECF No. 64), following which Mr. Tuttle was designated as her
5 substitute. (*See generally* ECF Nos. 74, 79, 82.)

6 This action was transferred to the undersigned on November 2, 2020. (*See generally*
7 ECF No. 87). The Parties filed the instant Motions on May 14, 2021. (*See generally*
8 Motions.)

9 LEGAL STANDARD

10 Under Federal Rule of Civil Procedure 56, a party may move for summary judgment
11 as to a claim or defense or part of a claim or defense. Fed. R. Civ. P. 56(a). Summary
12 judgment is appropriate where “the movant shows that there is no genuine dispute as to
13 any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ.
14 P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Although materiality is
15 determined by substantive law, “[o]nly disputes over facts that might affect the outcome of
16 the suit . . . will properly preclude the entry of summary judgment.” *Anderson v. Liberty*
17 *Lobby, Inc.*, 477 U.S. 242, 248, (1986). A dispute is “genuine” only “if the evidence is
18 such that a reasonable jury could return a verdict for the nonmoving party.” *Id.* When
19 considering the evidence presented by the parties, “[t]he evidence of the non-movant is to
20 be believed, and all justifiable inferences are to be drawn in his favor.” *Id.* at 255.

21 The initial burden of establishing the absence of a genuine issue of material fact falls
22 on the moving party. *Celotex*, 477 U.S. at 323. The moving party may meet this burden
23 by “identifying those portions of ‘the pleadings, depositions, answers to interrogatories,
24 and admissions on file, together with the affidavits, if any,’ which it believes demonstrate
25 the absence of a genuine issue of material fact.” *Id.* “When the party moving for summary
26 judgment would bear the burden of proof at trial, ‘it must come forward with evidence
27 which would entitle it to a directed verdict if the evidence went uncontroverted at trial.’”

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1 Mem. at 30–35.) Although the Parties briefed the application of the 1986-version of
2 Section 3730(e)(4), (*compare, e.g.*, Defs.’ Mem. at 31, *with, e.g.*, ECF No. 108 (“Rel.’s
3 Opp’n”) at 29), the Court noted at the hearing that relevant statutory provision was
4 amended extensively effective March 23, 2010, and that the relevant time period spans
5 from August 9, 2009, when GET first began representing itself as a WOSB, until
6 December 10, 2015. (*See* ECF No. 101-1 (“Rel.’s Mem.”) at 6.) This overlap is critical
7 because, among other things, the 2010 amendments removed the jurisdictional language
8 from Section 70(e)(4)(A), “making the public disclosure bar an affirmative defense rather
9 than a matter of jurisdiction.” *Silbersher v. Allergan Inc.*, 506 F. Supp. 3d 772, 788 (N.D.
10 Cal. 2020) (citing *Prather v. AT&T, Inc.*, 847 F.3d 1097, 1102 (9th Cir.), *cert. denied*, 137
11 S. Ct. 2309 (2017)), *motion to certify appeal granted*, No. 18-CV-03018-JCS, 2021 WL
12 292244 (N.D. Cal. Jan. 28, 2021). The Court therefore requested that the Parties submit
13 supplemental briefing as to which version of the statute applies. (*See* ECF No. 112.)

14 In their Supplemental Briefs, the Parties agreed that “the 1986 version of Section
15 3730(e)(4) applies to any alleged false claims occurring before March 23, 2010, and the
16 2010 version of Section 3730(e)(4) applies to any alleged false claims made after
17 March 23, 2010.” (*See generally* ECF No. 113 (“Defs.’ Supp. Br.”); ECF No. 114 (“Rel.’s
18 Supp. Br.”); *see also, e.g.*, *United States ex rel. Savage v. CH2M Hill Plateau Remediation*
19 *Co.*, No. 4:14-CV-5002-EFS, 2015 WL 5794357, at *10 (E.D. Wash. Oct. 1, 2015) (citing
20 *Hughes Aircraft Co. v. United States ex rel. Schumer*, 520 U.S. 939, 946 (1997)).) But as
21 Relator notes, (*see* Rel.’s Supp. Br. at 2), the earliest purchase order in the record is from
22 April 23, 2010. (*See* ECF No. 101-46 (“Ex. 45”) at 1878; ECF No. 101-47 at 1890.)
23 Accordingly, only the 2010 version of the public disclosure bar applies based on the current
24 record.

25 As amended effective March 23, 2010, the public disclosure bar provides:

- 26 (A) The court shall dismiss an action or claim under this section, unless
27 opposed by the Government, if substantially the same allegations or
28 transactions as alleged in the action or claim were publicly disclosed--

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- 1 (i) in a Federal criminal, civil, or administrative hearing in which
2 the Government or its agent is a party;
- 3 (ii) in a congressional, Government Accountability
4 Office[(“GAO”)], or other Federal report, hearing, audit, or
5 investigation; or
- 6 (iii) from the news media,

7 unless the action is brought by the Attorney General or the person
8 bringing the action is an original source of the information.

- 9 (B) For purposes of this paragraph, “original source” means an individual
10 who either (i) prior to a public disclosure under subsection (e)(4)(a),
11 has voluntarily disclosed to the Government the information on which
12 allegations or transactions in a claim are based, or (2) who has
13 knowledge that is independent of and materially adds to the publicly
14 disclosed allegations or transactions, and who has voluntarily provided
the information to the Government before filing an action under this
section.

15 31 U.S.C. § 3730(e)(4)(A)–(B). The inquiry involves two steps. *See United States ex rel.*
16 *Calva v. Impac Secured Assets Corp.*, No. SACV161983JVSJCGX, 2018 WL 6016152, at
17 *3 (C.D. Cal. June 12, 2018). “First, the Court must determine whether there was a prior
18 ‘public disclosure’ of the allegations or transactions underlying the *qui tam* suit through
19 one of the enumerated sources.” *Id.* (citing 31 U.S.C. § 3730(e)(4)(A) (1986 & 2010
20 versions)). “If there has been a public disclosure, the Court must then determine whether
21 the relator is an ‘original source’ within the meaning of the statute.” *Id.* (citing 31 U.S.C.
22 § 3730(e)(4)(A) (1986 & 2010 versions)). Here, Defendants challenge both whether
23 Relator (1) alleges allegations or transactions that were publicly disclosed, and, if so, (2) is
24 the original source of the information. (*See Defs.’ Mem.* at 30–35.)

25 As for the first prong, public disclosure requires that “three things are true: (1) the
26 disclosure at issue occurred through one of the channels specified in the statute; (2) the
27 disclosure was ‘public’; and (3) the relator’s action is ‘based upon’ the allegations or
28 transactions publicly disclosed.” *United States ex rel. Mateski v. Raytheon Co.*, 816 F.3d

1 565, 570 (9th Cir. 2016) (quoting *Malhotra v. Steinberg*, 770 F.3d 853, 858 (9th Cir. 2014)
2 (quoting 31 U.S.C. § 3730(e)(4)(A) (1986)); *Silbersher*, 506 F. Supp. 3d at 797 (quoting
3 *United States ex rel. Solis v. Millennium Pharm., Inc.*, 885 F.3d 623, 626 (9th Cir. 2018)).
4 Here, Defendants argue that GET’s public website and publicly available filings with the
5 California Secretary of State “publicly disclosed the allegedly true state of facts[,] that is,
6 that GET’s CEO was a man rather than a woman.” (See Defs.’ Mem. at 31–33.) According
7 to Defendants, these sources, as “publicly-available filings” and “news media,” are one of
8 the channels specified by Section 3730(e)(4)(A). (See Defs.’ Mem. at 31.)

9 The Court first examines Defendants’ contention that their “publicly-available
10 filings,” presumably GET’s filings with the California Secretary of State revealing that it
11 had male CEOs during the entirety of the relevant period, “constitute an administrative
12 report.” (See Defs.’ Mem. at 31.) Although the 1986 version of the public disclosure bar
13 included “administrative . . . report[s],” See 31 U.S.C. § 3730(e)(4)(A) (1986), the 2010
14 version substituted “Federal” in its place. See 31 U.S.C. § 3730(e)(4)(A)(ii) (2010) (“The
15 court shall dismiss an action or claim under this section, unless opposed by the
16 Government, if substantially the same allegations or transactions as alleged in the action or
17 claim were publicly disclosed . . . in a congressional, Government Accountability Office,
18 or other Federal report, hearing, audit, or investigation.”). Defendants’ filings with the
19 California Secretary of State are not “congressional[;]” are not made with the GAO; and,
20 unlike the filings with the Securities and Exchange Commission in *United States ex rel.*
21 *Ryan v. Endo Pharmaceuticals, Inc.*, 27 F. Supp. 3d 615, 628 n.16 (E.D. Pa. 2014), are not
22 “Federal.” The Court therefore concludes that Defendants have failed to establish that their
23 filings with the California Secretary of State were made publicly available through one of
24 the enumerated sources specified in the 2010 version of the public-disclosure bar.

25 Defendants also contend that GET’s website and filings with the California
26 Secretary of State qualify as “news media” for purposes of the FCA’s public-disclosure
27 bar. (See Defs.’ Mem. at 1; see also 31 U.S.C. § 3730(e)(4)(A)(iii).) Although there is
28 little in-depth analysis of the scope of the term “news media” for the purposes of the statute,

1 the channels specified by the statute do “not capture all information that could be described
2 as ‘public’ in common parlance.” *See United States ex rel. Integra Med Analytics LLC v.*
3 *Providence Health & Servs.*, No. CV 17-1694 PSG (SSX), 2019 WL 3282619, at *10 (C.D.
4 Cal. July 16, 2019), *rev’d and remanded on different grounds*, 854 F. App’x 840 (9th Cir.
5 2021). “Instead, ‘[b]y its plain terms, the public disclosure bar applies to some methods of
6 public disclosure and not to others.’” *Id.* (alteration in original) (quoting *Schindler*
7 *Elevator Corp. v. United States ex rel. Kirk*, 563 U.S. 401, 414 (2011). Consequently,
8 “applying the news media provision to anything ever published publicly on the internet is
9 contrary to the ordinary meaning of the term ‘news media’ and has the potential to
10 eviscerate the balance Congress struck between encouraging private parties to bring forth
11 evidence of fraud and preventing parasitic suits.” *See id.* at *12.

12 Accordingly, the Honorable Philip S. Gutierrez has proposed “several factors [that]
13 provide useful guideposts in determining whether information from an online source has
14 been disclosed ‘from the news media’ within the meaning of the FCA’s public disclosure
15 bar.” *See id.* at *14. “*First*, . . . the extent to which the information typically conveyed by
16 a source would be considered newsworthy is relevant to whether it is a news media source.”
17 *See id.* (emphasis in original). “*Second*, . . . a news media entity is ordinarily viewed as
18 one that collects information from outside sources, exercises some editorial judgment in
19 deciding what to publish, and then transmits the published information to an audience—
20 put more simply, it curates information—in contrast to an entity that simply publishes
21 information about itself.” *See id.* (emphasis in original); *see also United States ex rel.*
22 *Customs Fraud Investigations, LLC v. Victaulic Co.*, 36 ITRD 697 (E.D. Pa. 2014) (“This
23 Court agrees that, at minimum, a publicly available website may qualify as ‘news media’
24 where the information provided is to some extent curated—that is, where the authors or
25 editors of the website actively gather and disseminate information, provide search tools for
26 the public to analyze data, provide some editorial content, or exercise some control over
27 the information provided—and where the information bears at least some of the ‘indicia of
28 reliability or substantiation’ common to more traditional news media sources.”). “*Third*,

1 . . . a source’s intent to disseminate information widely, as opposed to only to a few
2 individuals, is relevant to whether it is acting as a news media entity.” *See Integra Med*
3 *Analytics*, 2019 WL 3282619, at *14 (emphasis in original). “*Fourth*, . . . the more that an
4 online source functions like . . . traditional [news media] outlets, the more likely it is to be
5 news media under the FCA.” *See id.* at *15 (emphasis in original). “Relevant to this
6 consideration is the extent to which the conveyance of newsworthy information is the
7 primary purpose of entity publishing the online source or whether the dissemination of
8 such information is merely ancillary to some other purpose.” *See id.* “*Finally*, consistent
9 with the Supreme Court’s approach in *Schindler Elevator*, . . . the most important
10 consideration is whether the source in question falls within the ‘broad ordinary meaning’
11 of the term ‘news media’—in other words, whether it could reasonably be described as
12 ‘news media’ as at least some people would [use] that term in everyday speech.” *See id.*
13 (emphasis in original) (quoting *Schindler Elevator*, 363 U.S. at 408).

14 Applying those factors here, it is clear that neither GET’s nor the California
15 Secretary of State’s website qualifies as “news media” for purposes of the FCA’s public-
16 disclosure bar. As for GET’s website, first, given GET’s size, it appears unlikely that the
17 announcement of its CEO would be considered particularly newsworthy. Second, GET’s
18 website is not “curated,” but rather “simply publishes information about itself.” *See id.* at
19 *14. Third, while GET does intend to circulate information widely to potential business
20 partners, fourth, the conveyance of this information is “merely ancillary to” its primary
21 business of manufacturing and selling naval tactical data systems. *See id.* at *15. Finally,
22 and most importantly, GET’s corporate website does not fall within the broad ordinary
23 meaning of the term “news media.” The same analysis would apply to GET’s filings on
24 the California Secretary of State’s website and GET’s submissions through SAM. The
25 Court therefore concludes that the sources Defendants identify as disclosing the allegedly
26 true state of facts are not “news media” as specified by the 2010 version of the FCA.

27 Because the Court concludes that none of the purported disclosures revealing the
28 allegedly “true” state of affairs—*i.e.*, that GET had male CEOs during the relevant

1 period—occurred through any channel specified by the 2010 version of the statute,
2 Relator’s FCA claims are not barred by the public-disclosure bar. Accordingly, the Court
3 **DENIES** Defendants’ Motion for Summary Judgment as to that argument.

4 **II. FCA Claims**

5 *A. First and Second Causes of Action*

6 Relator alleges claims for presentation of false claims in violation of 31 U.S.C.
7 § 3729(a)(1)(A), (*see* Compl. ¶¶ 90–94), and for making or using a false record or
8 statement under 31 U.S.C. § 3729(a)(1)(B). (*See* Compl. ¶¶ 95–100.) The Parties agree
9 that “the essential elements of False Claims Act liability . . . [are]: (1) a false statement or
10 fraudulent course of conduct, (2) made with scienter, (3) that was material, causing (4) the
11 government to pay out money or forfeit moneys due.” *See United States ex rel. Hendow*
12 *v. Univ. of Phoenix*, 461 F.3d 1166, 1174 (9th Cir. 2006); *see also* Rel.’s Mem. at 24; Defs.’
13 Mem. at 23–24. Each Party contends that they are entitled to summary adjudication of
14 these claims—or parts of them—in their favor. (*Compare, e.g.*, Rel.’s Mem. at 26–38,
15 *with, e.g.*, Defs.’ Mem. at 23–27.)

16 As an initial matter, it is unclear whether Relator contends that Defendants
17 misrepresented GET as a WOSB for purposes of obtaining orders, contracts, and sub-
18 contracts as part of the WOSB Goal or under the WOSB Program. (*See generally* Compl.)
19 The two programs are distinct, meaning the standards and evidence required to establish
20 Defendants’ liability (or not) differ. For example, to the extent Relator’s claims are
21 premised on GET’s alleged misrepresentation that it was a WOSB for purposes of the
22 WOSB Program, Relator must prove that Defendants knowingly misrepresented GET as a
23 WOSB to obtain payment from the government for an award for which GET was not
24 eligible under the WOSB Program. Defendants have introduced uncontroverted evidence
25 that “GET has never . . . been awarded a contract under the WOSB Federal Contract
26 Program.” (*See* ECF No. 102-4, Ex. C (“Adams Decl.”) ¶ 3; *see also* ECF No. 107-1
27 (“Adams Opp’n Decl.”) ¶¶ 3, 7.) Accordingly, to the extent Relator’s claims are premised
28 on Defendants’ alleged false statements or presentation of false claims to obtain payment

1 under the WOSB Program, the Court **GRANTS** Defendants’ Motion for Summary
2 Judgment and **DENIES** Relator’s.

3 As for Relator’s claims premised on Defendants’ alleged misrepresentations of
4 GET’s WOSB status in connection with the WOSB Goal, Defendants have introduced
5 uncontroverted evidence that certain contracts, subcontracts, and orders were awarded to
6 GET because GET was the sole source for components of its proprietary systems. (*See*,
7 *e.g.*, Adams Opp’n Decl. ¶¶ 6–8 & Ex. A (attesting to contracts for which GET was the
8 sole available source).) Because no other entity—WOSB or not—could furnish these parts,
9 (*see, e.g., id.*; ECF No. 102-4 Ex. B (“R. Tuttle Decl.”) ¶¶ 4–5, 7–9, 12–16 (attesting that
10 GET’s products are not interchangeable with those of its competitors, meaning that GET
11 is the only available source for customers who have installed their system)), Defendants’
12 representation of GET as a WOSB could not “hav[e had] a natural tendency to influence,
13 or be capable of influencing, the payment or receipt of money or property” under a sole-
14 source contract. *See* 31 U.S.C. § 3729(b)(4). Because there exist no disputes of fact that
15 the purchases identified in Exhibit A to the Adams Opposition Declaration could only have
16 been purchased from GET, the Court **GRANTS** Defendants’ Motion for Summary
17 Judgment as to those specific purchases and **DENIES** Relator’s.

18 As for the remaining invoices identified by Relator, (*see generally* ECF No. 101-46
19 (“Ex. 45”); ECF Nos. 101-47–56 (“Ex. 46”)), a number of critical material facts—and even
20 the relevant law—remain subject to dispute, preventing the Court from granting summary
21 adjudication in favor of either Party. For example, there is no evidence in the record as to
22 which, if any, of the remaining underlying contracts, subcontracts, or orders (1) were with
23 the government or a government contractor as opposed to a private party, (*see* ECF No.
24 107 (“Defs.’ Opp’n”) at 4; *cf.* Adams Decl. ¶ 4 & Ex. A (identifying 26 “direct Department
25 of Defense contracts between 2011 and 2015” in which GET “Marked Woman Owned”));
26 (2) involved representations regarding GET’s claimed WOSB designation, (*see* Defs.’
27 Opp’n at 6); and (3) were awarded to meet the WOSB Goal. (*See id.* at 5.) Accordingly,
28 neither Party has demonstrated the absence of disputed facts as to whether or not

1 Defendants made false statements or presented false claims as to the remainder or these
2 invoices.

3 There also appears to be a great deal of confusion as to which statutory and/or
4 regulatory definition(s) of a WOSB controls here, both because there are several definitions
5 and because the majority of those definitions have been amended during the course of the
6 relevant conduct.² For example, Defendants began representing GET as a WOSB under
7 the FAR on August 9, 2009, (*see* Jt. Stmt. ¶ 15), after implementation of the WOSB Goal,
8 *see* 15 U.S.C. § 644(g)(1)(A)(v) (1994), but before the SBA finalized its regulations
9 promulgating the WOSB Program. *See* 13 C.F.R. §§ 127.100–127.700 (2010). Effective
10 April 1, 2011, FAR began distinguishing between WOSBs generally and those “eligible
11 under the WOSB Program (in accordance with 13 CFR part 127).” *Compare, e.g.*, 48
12 C.F.R. §§ 2.101, 52.219-1, 52.212-3 (eff. July 1, 2009), *with, e.g.*, 48 C.F.R. §§ 2.101,
13 52.219-1, 52.212-3 (eff. Apr. 1, 2011). This would seem to indicate that the WOSB
14 Program regulations are inapplicable to WOSBs that are not competing in the WOSB
15 Program. Relator’s falsity argument, however, relies heavily on the WOSB Program
16 regulations, (*see generally* Rel.’s Mem. at 26–30), which impose additional requirements
17 for control of a WOSB. *See, e.g.*, 13 C.F.R. § 127.202(b) (“A woman . . . must hold the
18 highest officer position in the concern . . .”).³ The Parties have identified—and the Court
19

20
21 ² Indeed, it appears that even the SBA and contracting officers have had a great deal of difficulty in
22 navigating the WOSB Program. *See, e.g.*, Dilger, *supra*, at 18–19 & nn.62–70 (noting high rate of
23 ineligibility of WOSB set-aside and sole-source contract awards through 2019, including a 2018 SBA
24 Office of Inspector General (“OIG”) audit finding that 50 of 56 audited contracts between January 1, 2016,
25 and April 30, 2017, “were made ‘without having the necessary documentation to determine eligibility’ of
the award recipients” (quoting SBA OIG, 18-18, Audit Report: SBA’s Women-Owned Small Business
Federal Contracting Program 4 (2018), [https://www.sba.gov/document/report-18-18-sbas-women-
owned-small-business-contracting-program](https://www.sba.gov/document/report-18-18-sbas-women-owned-small-business-contracting-program))).

26 ³ For this reason, the Court is not persuaded by either the SBA’s of the Navy’s “determination” of GET’s
27 WOSB status. The SBA eligibility examination related to GET’s eligibility as a WOSB under the WOSB
28 Program. (*See, e.g.*, ECF No. 101-33 (“Ex. 2”).) Further, although the SBA had promised to “provide
[GET] with a written eligibility determination,” (*see id.*), the only “determination” available in the record
is Defendant Adams’ handwritten Post-It note dated December 9, 2015, indicating that Glynis Long

1 has found—no authority clarifying the correct standard to be applied here, and “differences
2 in interpretation growing out of a disputed legal question are . . . not false under the FCA.”
3 *Thulin v. Shopko Stores Operating Co.*, No. 10-CV-196-WMC, 2013 WL 5946503, at *7
4 (W.D. Wis. Nov. 5, 2013) (alteration in original) (quoting *United States ex rel. Lamers v.*
5 *City of Green Bay*, 168 F.3d 1013, 1018 (7th Cir. 1999) (citing *Hagood v. Sonoma Cnty.*
6 *Water Agency*, 81 F.3d 1465, 1477 (9th Cir. 1996))) (citing *United States v. Medica Rents*
7 *Co.*, Nos. 03-11297 *et al.*, 2008 WL 3876307, at *3 (5th Cir. Aug. 19, 2008))), *aff’d*, 771
8 F.3d 994 (7th Cir. 2014).

9 Whatever standard applies, there exist genuine disputes of material fact as to GET’s
10 management structure and control and, consequently, the falsity of Defendants’
11 designation of GET as a WOSB. It is uncontroverted that men served as GET’s CEO
12 during the relevant period, (*see* Jt. Stmt. ¶¶ 9–10), but Defendants introduce evidence that
13 GET’s “management and daily business operations [we]re controlled by one or more
14 women” during the relevant period. *See* 48 C.F.R. § 2.101. Specifically, Defendants
15 introduce evidence that the CEO was subordinate to Guille Tuttle, (*see, e.g.*, ECF No. 102-
16 4 Ex. A (“G. Tuttle Decl.”) ¶¶ 15, 24–25 (attesting that Guille Tuttle “specifically chose to
17 avoid being mentioned publicly as being the face of the company” but “created and defined
18 a CEO position and established [her]self in the Ultimate Authority,” to which the CEO was
19

20
21 informed Defendant Adams by phone that “because David Grundies is running the company as CEO she
22 is changing our status in SAM, unchecking the box until status of that office changes.” (*See* ECF No.
23 101-2 (“Ex. 1”).) It is unclear from the record whether Long was unchecking the WOSB Program
24 certification—which Defendants acknowledged at the hearing was erroneously selected—or GET’s
25 general WOSB certification for purposes of the WOSB Goal. (*See, e.g.*, ECF No. 101-2 (“Ex. 22”).)

26 The Navy determination, on the other hand, occurred well after the relevant time period. (*See, e.g.*, ECF
27 No. 101-42 (“Ex. 41”) (show cause letter dated January 1, 2017).) Further, like the SBA, the Navy appears
28 to have been concerned with GET’s representation as a WOSB under the WOSB Program regulations, 13
C.F.R. 127. (*See* Ex. 41.) Finally, Relator has provided no record of the Navy’s determination except
Defendants’ admission that “the Department of Navy, Acquisition Integrity Office determined that GET
was not a WOSB and notified Defendants of this determination on or around April 14, 2017.” (*See* ECF
No. 101-17 (“Ex. 16”) at 9, Request for Admission No. 25 and Response to Request for Admission No.
25.) Accordingly, the Court cannot determine the scope of the Navy’s final determination.

1 “subordinate”)), and that several women, namely, Defendant Adams, Guille Tuttle, Sharon
2 Bakun, and Cheri McCadam, ran GET during the relevant period. (*See, e.g., id.* ¶¶ 24–25
3 (attesting that Guille Tuttle made final decisions over policies, procedures, and contractual
4 and operational commitments); Adams Decl. ¶ 2 (attesting that Adams served as “General
5 Manager” and “was responsible for the day-to-day business and manufacturing operations”
6 between 2003 and 2015); ECF No. 102-5 Ex. G (“Adams Depo.”) at 12:20–13:13
7 (testifying that, during the relevant period, Adams served as General Manager, Bakun held
8 the position of Head of Finance, and McCadam was Head of Production).) Because the
9 propriety of Defendants’ representation of GET as a WOSB requires resolving factual
10 issues (and credibility determinations), neither Party is entitled to summary adjudication in
11 their favor as to falsity.

12 While these determinations justify denial of both Motions for Summary Judgment,
13 Relator alternatively asks the Court to grant partial summary judgment in its favor as to
14 certain elements of its FCA claims. (*See* Rel.’s MSJ at 2–4.) Specifically, Relator asks the
15 Court to determine the following as a matter of law:

16 (1) From August 9, 2009[,] to December 10, 2015, Defendants
17 represented that GET was a [WOSB];

18 (2) From August 9, 2009[,] to December 10, 2015, GET was not a
19 WOSB because during that period men – not women – (a) led GET and
20 managed its daily business operations on a full-time basis and (b) served in its
highest officer position of CEO;

21 (3) From August 9, 2009[,] to December 10, 2015, GET represented
22 that it was a WOSB in at least 1,022 invoices that it submitted to government
23 and prime contractor customers in connection with a request for payment
24 under a federal government prime contract or subcontract;

25 (4) GET’s false representations were made knowingly, *see* 31
26 U.S.C. § 3729(b)(1), in that Defendants (a) had actual knowledge that GET
27 was not a WOSB, (b) acted in deliberate ignorance of the truth or falsity of
28 the representation that GET was a WOSB, and/or (c) acted in reckless
disregard of the truth or falsity of the representation that GET was a WOSB;

///

1 (5) GET's false representations that it was a WOSB were material in
2 that they had a material effect on the decisions of the federal government and
3 prime contractors to make awards to GET and to make payments to GET
4 pursuant to the contracts awarded to GET as a result of such representations;

5 (6) under the Presumed Loss Rule, 13 C.F.R. § 121.108, the United
6 States suffered damages of approximately \$16,001,503.07 as a result of
7 GET's false representations, reflecting the total value of the government
8 contracts and subcontracts received by GET from 2009 through 2015, which
9 is comprised of approximately \$3,718,858 in government contracts and
10 \$12,282,645 in subcontracts under government contracts;

11 (7) trebling the United States' damages of approximately
12 \$16,001,503.07 pursuant to 31 U.S.C. § 3729(a)(1) yields damages of more
13 than \$48 million to be awarded under the False Claims Act;

14 (8) pursuant to 31 U.S.C. § 3729(a)(1), the minimum civil penalty to
15 be awarded for each false document is currently \$11,665, yielding total civil
16 penalties of at least \$11,921,630 based on the 1,022 invoices submitted by
17 GET for payment; and

18 (9) each Defendant is jointly and severally liable for the penalties
19 and damages awarded for GET's false claims.

20 (*See id.*)

21 Regarding Relator's first request, the Parties do not dispute that, "[o]n or about
22 August 9, 2009, GET represented to the U.S. Government and prime contractors that it was
23 a WOSB, as defined by FAR 2.101," (Jt. Stmt. ¶ 17), or that "GET represented itself as a
24 WOSB on its website from August 9, 2009[,] to December 10, 2015." (*Id.* ¶ 21.) To the
25 extent Relator seeks summary adjudication that GET represented itself as a WOSB in any
26 other capacity between August 9, 2009, to December 10, 2015, however, the Court
27 **DENIES** Relator's request (1).

28 As for Relator's second request, Defendants acknowledged at the hearing that GET
did not qualify as a WOSB for purposes of the WOSB Program. Nonetheless, because it
is undisputed that GET did not obtain any awards under the WOSB Program, the Court has
dismissed Relator's FCA causes of action to that extent. The Court therefore **DENIES AS**

1 **MOOT** Relator’s request (2) to the extent it is premised on GET’s qualification as a WOSB
2 under the WOSB Program. As for the WOSB Goal, the Court has already determined that
3 “there exist genuine disputes of material fact as to GET’s management structure and
4 control.” *See supra* page 22. The Court therefore **DENIES** Relator’s request (2)(a) to the
5 extent it is premised on GET’s eligibility as a WOSB for the WOSB Goal. Although the
6 Parties do not dispute that, “[s]tarting sometime in 1997, men served as GET’s CEO until
7 December 10, 2015,” (Jt. Stmt. ¶ 9), or that, “[b]etween August 9, 2009[,] to December 10,
8 2015, a man held the officer position entitled CEO/President,” (*id.* ¶ 10), the Court also
9 **DENIES** request (2)(b) to the extent Relator seeks a determination that GET was not a
10 WOSB for purposes of the WOSB Goal because it is not clear that the WOSB Program
11 regulations, including 13 C.F.R. § 127.202(b), apply. *See supra* pages 21–22.

12 Regarding Relator’s third request, the Court already has granted summary judgment
13 in Defendants’ favor on several of the invoices identified by Relator. *See supra* page 20;
14 *see also* Adams Opp’n Decl. Ex. A. As for the remaining invoices, the Court determined
15 that “there is no evidence in the record as to which, if any, of the remaining [invoices] . . .
16 involved representations regarding GET’s claimed WOSB designation.” *See supra* page
17 20. The Court therefore **DENIES** request (3).

18 As to Relator’s fourth request, given material issues concerning the alleged falsity
19 of Defendants’ WOSB representations and the abject confusion regarding the relevant
20 statutory and regulatory scheme, *see supra* pages 20–23 & nn.2–3; Defs.’ Opp’n at 20
21 (contending that any misrepresentations “may stem from innocent mistakes in
22 interpretation of the complex and frequently changing laws and regulations governing the
23 WOSB Program and federal procurement”), the Court **DENIES** Relator’s request (4).

24 Regarding Relator’s fifth request, the Court already has granted summary judgment
25 in favor of Defendants as to those orders for which GET was the sole source for its own
26 proprietary components. *See supra* page 20; *see also* Adams Opp’n Decl. Ex. A. The
27 Court therefore **DENIES** Relator’s request (5).

28 ///

1 Relator’s remaining requests pertain to damages. Because Relator has failed to
2 establish liability, determinations related to damages (and their calculation) are premature.
3 The Court therefore **DENIES** requests (6) through (9).

4 Accordingly, the Court **GRANTS IN PART AND DENIES IN PART** Defendants’
5 Motion for Summary Judgment and **DENIES** Relator’s Motion for Summary Judgment as
6 to Relator’s first and second causes of action.

7 ***B. Third Cause of Action for Conspiracy***

8 Relator’s third cause of action is for conspiracy to violate the FCA pursuant to 31
9 U.S.C. § 3729(a)(1)(C), (*see generally* Compl. ¶¶ 101–04), which makes liable “any person
10 who . . . conspires to commit a violation of [the FCA].” *See* 31 U.S.C. § 3729(a)(1)(C).
11 Relator contends that it is entitled to summary adjudication of this claim in its favor, (*see*
12 Rel.’s Mem. at 38–39), while Defendants urge that the claim is barred by the intracorporate
13 conspiracy doctrine. (*See* Defs.’ Mem. at 28.)

14 “The intracorporate conspiracy doctrine, derived from antitrust law, holds that
15 a conspiracy requires ‘an agreement among two or more persons or distinct business
16 entities.’” *United States ex rel. Lupo v. Quality Assurance Servs., Inc.*, 242 F. Supp. 3d
17 1020, 1027 (S.D. Cal. 2017) (quoting *United States v. Hughes Aircraft Co.*, 20 F.3d 974,
18 979 (9th Cir. 1994), *as amended* (Apr. 28, 1994)). “The logic for the doctrine comes
19 directly from the definition of a conspiracy.” *Id.* (quoting *Hoefler v. Fluor Daniel, Inc.*, 92
20 F. Supp. 2d 1055, 1057 (C.D. Cal. 2000)). “It is basic in the law of conspiracy that you
21 must have two persons or entities to have a conspiracy. ‘A corporation cannot conspire
22 with itself anymore than a private individual can, and it is the general rule that the acts of
23 the agent are the acts of the corporation.’” *Id.* (quoting *Hoefler*, 92 F. Supp. 2d at 1057
24 (quoting *Nelson Radio & Supply Co. v. Motorola, Inc.*, 200 F.2d 911, 914 (5th Cir. 1952))).

25 “Though the Ninth Circuit has not spoken on the issue, a number of district courts,
26 including those within the Ninth Circuit, have applied the intracorporate conspiracy
27 doctrine to FCA claims.” *Id.* (collecting cases); *see also Hawaii ex rel. Torricer v. Liberty*
28 *Dialysis-Haw. LLC*, 512 F. Supp. 3d 1096, 1118 (D. Haw. 2021); *United States ex rel.*

1 *Markus v. Aerojet Rocketdyne Holdings, Inc.*, 381 F. Supp. 3d 1240, 1249 (E.D. Cal. 2019);
2 *United States ex rel. Ruhe v. Masimo Corp.*, 929 F. Supp. 2d 1033, 1037–38 (C.D. Cal.
3 2012). Although Relator cites to a number of out-of-Circuit authorities to support its
4 argument that the intracorporate conspiracy doctrine does not apply in the FCA context,
5 (see Rel.’s Opp’n at 25–27), the Court finds persuasive the reasoning of “[t]he weight of
6 existing case law authority” within this Circuit. (*Cf id.* at 26.) Accordingly, the Court
7 concludes that it is appropriate to apply the intracorporate conspiracy doctrine here.

8 It is undisputed that Adams, Tuttle, MacNeil, and Grundies were acting as
9 employees of GET during the relevant period, (see Jt. Stmt. ¶¶ 1, 4, 11, 13, 16, 22), and
10 Relator introduces no facts showing that any of these Defendants conspired with any person
11 or entity distinct from GET. Accordingly, the Court concludes that Relator’s third cause
12 of action is barred by the intracorporate conspiracy doctrine and **DISMISSES** that claim.

13 **C. Statute of Limitations**

14 Finally, Defendants argue in their Opposition to Relator’s Motion for Summary
15 Judgment that Relator’s claims under the FCA are barred by the statute of limitations. (*See*
16 *Defs.’ Opp’n* at 29–31.) The FCA sets the following statute of limitations:

17 (b) A civil action under section 3730 may not be brought—

- 18 (1) more than 6 years after the date on which the violation of section 3729
19 is committed, or
20 (2) more than 3 years after the date when facts material to the right of action
21 are known or reasonably should have been known by the official of the
22 United States charged with responsibility to act in the circumstances,
23 but in no event more than 10 years after the date on which the violation
24 is committed,

25 whichever occurs last.

26 31 U.S.C. § 3731(b).

27 Defendants contend that any violations occurring before February 16, 2012—six
28 years before Relator filed its Complaint—are barred under 31 U.S.C. § 3731(b)(1). (*See*

1 Defs.’ Opp’n at 30.) Relator does not contest that some its claims would be untimely under
2 Section 3731(b)(1); rather, it contends that the Section 3731(b)(2) applies to its FCA causes
3 of action. (*See* ECF No. 110 (“Rel.’s Reply”) at 13–15.)

4 As for Section 3731(b)(2), Defendants urge that Relator’s claims are untimely under
5 that provision because the contracting officers that verify the eligibility of contractors
6 should have been aware of any alleged fraud at the time of awarding GET any contracts.
7 (*See* Defs.’ Opp’n at 30–31.) Relator, on the other hand, argues that its claims are timely
8 because Relator did not provide its comprehensive disclosure to the SBA, Navy, and GSA
9 until August 9, 2015. (*See* Rel.’s Reply at 14 (citing ECF No. 101-32 (“Ex. 31”)).) In any
10 event, Relator asserts, the relevant official is not the contracting officer, but rather
11 somebody within the Department of Justice (“DOJ”), who was not notified in this case
12 until May 2, 2016, at the earliest. (*See id.* at 14–15 (citing ECF No. 101-2 (“Ex. 1”)).) The
13 Court therefore must determine who “the official of the United States charged with
14 responsibility to act in the circumstances” was and when that official “kn[ew] or reasonably
15 should have been known” of Defendants’ alleged fraud.

16 Unfortunately, there exists little guidance as to who the relevant official is for
17 purposes of the FTCA’s statute of limitations, and what little guidance there is has been
18 inconsistent. *See, e.g., LW Constr. of Charleston, LLC v. United States*, 139 Fed. Cl. 254,
19 295 (2018) (“Other judges in various federal courts, for example, are divided on whether
20 the ‘official of the United States’ refers specifically to an official within the Civil Division
21 of the DOJ or to any government employee.”); *see also, e.g., Cochise Consultancy, Inc. v.*
22 *United States ex rel. Hunt*, --- U.S. ---, 139 S. Ct. 1507, 1514 (2019) (declining to determine
23 “which official or officials the statute is referring to” but concluding that the phrase does
24 exclude relators). Ultimately, the Court finds persuasive those cases concluding that the
25 statute of limitations begins to run once the DOJ knew—or should have known—of the
26 material facts. *See, e.g., United States ex rel. Jordan v. Northrop Grumman Corp.*, No.
27 CV 95-2985 ABC (EX), 2002 WL 35628747, at *4 (C.D. Cal. Aug. 5, 2002) (“Based upon
28 the legislative history, the Court finds that the relevant official is one withing the

1 Department of Justice.”); *United States ex rel. Condie v. Bd. of Regents of Univ. of Cal.*,
2 No. C89-3550-FMS, 1993 WL 740185, at *2 (N.D. Cal. Sept. 7, 1993) (“[T]he Court
3 follows the reasoning of *Island Park* and holds that the statute of limitations was tolled
4 until the DOJ became aware, or should have become aware, of the false claims.”); *United*
5 *States v. Inc. Vill. of Island Park*, 791 F. Supp. 354, 363 (E.D.N.Y. 1992) (“[T]he
6 limitations period was tolled until ‘the facts material to the right of action [were] known or
7 reasonably should have been known’ by that DOJ official.”).

8 Applying that standard here, Relator’s claims are timely whether the Court
9 determines that the DOJ reasonably should have known of Defendants’ allegedly
10 fraudulent claims after Relator made its disclosure to the Navy, SBA, and GSA on
11 August 9, 2015, (*see generally* Ex. 31); after Relator met with officials from the Criminal
12 Division of the United States Attorney’s Office for the Southern District of California on
13 May 2, 2016, (*see generally* ECF No. 110-2); or after Relator subsequently met with
14 officials from the Civil Division of that office. (*See* Rel.’s Reply at 15 n.7.) The limitations
15 period therefore did not run until August 9, 2018, at the earliest, which was over six months
16 after Relator filed its Complaint on February 16, 2018. (*See generally* Compl.)
17 Accordingly, the Court concludes that Relator’s FCA claims are timely.

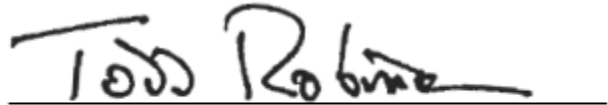
18 CONCLUSION

19 In light of the foregoing, the Court **DENIES** Relator’s Motion for Summary
20 Judgment (ECF No. 101) and **GRANTS IN PART AND DENIES IN PART** Defendants’
21 Motion for Summary Judgment (ECF No. 102). Specifically, the Court **GRANTS**
22 Defendants’ Motion for Summary Judgment as to (1) Relator’s first and second causes of
23 action to the extent those claims are premised on (a) Defendants’ allegedly false statements
24 or claims in connection with the WOSB Program, and (b) the orders identified in Exhibit
25 A to the Adams Opposition Declaration (ECF No. 107-1 at 6–15 as numbered by
26 CM/ECF); and (2) Relator’s third and fourth causes of action in their entirety. Defendants’
27 Motion for Summary Judgment is **DENIED** in all other respects. As Relator’s request, the
28 Court also **DISMISSES** Relator’s fourth cause of action.

1 The Parties **SHALL FILE** a Joint Status Report within seven (7) days of the
2 electronic docketing of this Order regarding the status of this litigation and proposing a
3 joint schedule for pretrial dates and deadlines.

4 **IT IS SO ORDERED.**

5 Dated: January 18, 2022

A handwritten signature in black ink that reads "Todd Robinson". The signature is written in a cursive style and is positioned above a horizontal line.

Honorable Todd W. Robinson
United States District Court

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