

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA
United States Attorney's Office
555 4th Street NW
Room 101-110
Washington, DC 20035
(202) 514-7566

EX REL. STEPHEN KAFFEE
9013 Rouen Lane
Potomac, MD 20854
(301) 983-0073 and
RICHARD RODRIGUEZ
27 Maplewood Drive
Danville, CA 94506
(925) 736-7954,

Plaintiffs-Relators,

- v. -

RAVEESH K. KUMRA,
HARINDER R. KUMRA,
HARINDER R. KUMRA d/b/a
ENTERTAINMENT UNLIMITED,
KANKAKEE CELLULAR, LLC,
WIRELESS ASSET MANAGEMENT, INC.
18630 Withey Road
Monte Sereno, CA 95030
(408) 399-0132,
SLO CELLULAR, INC.
733 Marsh Street, Suite B
San Luis Obispo, CA 93401
(805) 543-0100,
ELEPHANT WALK, LLC
75 Folsom Street, No. 1204
San Francisco, CA 94105
(408) 399-0162,
PUNEET WADHWA,
CLUB 42 CM LIMITED PARTNERSHIP,
700 BAND MANAGEMENT COMPANY,
L.P., and
EFFECTIVE COMMUNICATIONS
UNLIMITED, LLC
319 Andrews Street

RECEIVED

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**NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT**

Case No. 07-00857 (RMU)

Jury Trial Demanded

FILED UNDER SEAL

Los Gatos, CA 95030
(408) 395-4474

Defendants.

AMENDED COMPLAINT

Plaintiffs-Relators Stephen Kaffee and Richard Rodriguez, for their Amended Complaint against defendants Raveesh K. Kumra (“Kumra” or “Mr. Kumra”), Harinder R. Kumra (“Mrs. Kumra”), Harinder R. Kumra d/b/a Entertainment Unlimited (“Entertainment Unlimited”), Kankakee Cellular, LLC (“Kankakee Cellular”), Wireless Asset Management, Inc. (“WAMI”), SLO Cellular, Inc. (“SLO Cellular”), Elephant Walk, LLC (“Elephant Walk”), Club 42 CM Limited Partnership (“Club 42”), Puneet Wadhwa (“Wadhwa”), 700 Band Management Company, LP (“700 Band”), and Effective Communications Unlimited, LLC (“ECU”) (Kumra, Mrs. Kumra, Entertainment Unlimited, SLO Cellular, Kankakee Cellular, WAMI, Elephant Walk, Wadhwa, Club 42, 700 Band, and ECU each a “Defendant” and collectively “the Defendants”), allege upon information and belief as follows:

I. INTRODUCTION

1. This is an action to recover damages and civil penalties on behalf of the United States of America arising from false and/or fraudulent statements, records, claims and “reverse false claims” made and caused to be made by the Defendants and/or their agents and employees in violation of the Federal Civil False Claims Act, 31 U.S.C. § 3729 et seq., as amended (“the FCA”).

2. This qui tam case is brought against individuals and companies they own and control, all of whom knowingly defrauded the U.S. Treasury in order to retain or obtain federal property having a value between \$54 million and \$94 million. As detailed below, the Defendants engaged in a variety of schemes and actions to effectuate their purposes, including

but not limited to retaining licenses issued by the Federal Communications Commission (“FCC”) which they were not entitled to hold, seeking and obtaining bidding credits to which they were not entitled, colluding in bidding, and filing false and fraudulent statements with the FCC both in furtherance of and to conceal their schemes and actions.

3. Defendants’ fraud involves four series of events. First, Defendants Mr. Kumra, SLO Cellular, and Elephant Walk knowingly made false and fraudulent statements to the FCC in applications that SLO Cellular and Elephant Walk filed to participate in the FCC’s auction of Advanced Wireless Services licenses (“Auction 66”), including false certifications of compliance with the FCC’s anti-collusion and real-party-in-interest rules and false certification of entitlement to bidding discounts.

4. Second, Defendants Mr. Kumra, Mrs. Kumra, SLO Cellular, and Entertainment Unlimited fraudulently certified to the FCC that control of FCC licenses transferred from Mr. Kumra to Mrs. Kumra. These sham transactions were undertaken for the purpose of retaining Government property, specifically, FCC licenses held by SLO Cellular and Entertainment Unlimited, and shielding Defendants from penalties associated with their fraudulent activity in Auction 66. The Defendants intended to and did deprive the federal Government of property that, but for the Defendants’ fraudulent concealment, would have been returned to the FCC to be publicly auctioned for the benefit of the U.S. Treasury.

5. Third, Defendants Mr. Kumra, WAMI, and Kankakee Cellular knowingly concealed facts from and made false statements to the FCC regarding the operation of Kankakee Cellular. The Defendants’ actions were undertaken for the purpose of retaining Government property, specifically, the license issued by the FCC to Kankakee Cellular. The Defendants intended to and did deprive the federal Government of property that, but for the Defendants’

fraud, would have reverted to the FCC to be publicly auctioned for the benefit of the United States Treasury.

6. Fourth, Defendants Kumra, Wadhwa, Club 42, 700 Band, and ECU knowingly made false and fraudulent statements to the FCC in applications that Club 42 filed in connection with the FCC's auction of 700 MHz spectrum licenses ("Auction 73"), including false certifications of compliance with the FCC's real-party-in-interest rules and false certification of entitlement to bidding discounts, and as a result obtained a discount to which it was not entitled.

II. PARTIES

A. Plaintiffs-Relators

6. Stephen Kaffee. Plaintiff-Relator Kaffee is a United States citizen who resides at 9013 Rouen Lane, Potomac, Maryland 20854. Mr. Kaffee was engaged in the private practice of law from September 1982 until June 2003. In or about August 2004, Mr. Kaffee accepted an offer to become CEO of SLO Cellular, a position he held until December 2006.

7. Richard Rodriguez. Plaintiff-Relator Rodriguez is a United States citizen who resides at 27 Maplewood Drive, Danville, California 94506. Mr. Rodriguez served as Executive Vice President of SLO Cellular from September 2004 until December 2006.

B. Defendants

8. Raveesh K. Kumra. Defendant Kumra is a United States citizen whose primary residence is 18630 Withey Road, Monte Sereno, California 95030. Mr. Kumra's principal occupation has been the ownership and management of companies offering commercial mobile radio services to the public. Those companies have included Defendants SLO Cellular, Entertainment Unlimited (formerly known as Entertainment Unlimited, Inc.), Kankakee Cellular, and WAMI.

9. Harinder R. Kumra. Defendant Mrs. Kumra is a United States citizen whose primary residence is 18630 Withey Road, Monte Sereno, California 95030. Mrs. Kumra's primary occupation is the U.S. national director of the Oneness Movement, a "spiritual awakening" group based in Monte Sereno, California, and Chennai, India, and of the associated Oneness University. Mrs. Kumra has no experience in operating or managing a communications services company. Nonetheless, in August 2006, Mr. Kumra and Mrs. Kumra filed applications seeking FCC approval to transfer control of licenses issued to SLO Cellular and Entertainment Unlimited from Mr. Kumra to Mrs. Kumra.

10. SLO Cellular, Inc. Defendant SLO Cellular is a California subchapter S corporation wholly-owned by Kumra until October 2006, when he caused its stock to be transferred to Mrs. Kumra, by gift. SLO Cellular's business address is 733 Marsh Street, Suite B, San Luis Obispo, California 93401. SLO Cellular holds the Block A (non-wireline) cellular license issued by the FCC for the San Luis Obispo, California Rural Service Area (RSA340, FCC Call Sign KNKQ332) and operates a cellular system in the San Luis Obispo market.

11. Entertainment Unlimited. Mrs. Kumra, under the name Harinder R. Kumra d/b/a Entertainment Unlimited ("Entertainment Unlimited"), holds six licenses issued by the FCC to provide personal communications services ("PCS") for the Bakersfield, California Basic Trading Area ("BTA") (BTA028, FCC Call Sign WPOK945); the Salinas-Monterey, California BTA (BTA397, FCC Call Sign KNLF915); the San Luis Obispo, California BTA (BTA405, FCC Call Signs KNLG742 and KNLG743); the Santa Barbara-Santa-Maria, California BTA (BTA406, FCC Call Sign KNLG744), and the Visalia-Porterville-Hanford, California BTA (BTA458, FCC Call Sign WPOK946). The FCC originally issued these six licenses to Entertainment Unlimited, Inc., controlled by Defendant Kumra, which was the high bidder for the licenses in various FCC

spectrum auctions. In August 2006, Kumra caused the licenses to be “gifted” to Mrs. Kumra. Entertainment Unlimited’s business address is the residence of Mr. and Mrs. Kumra, 18630 Withey Road, Monte Sereno, California 95030.

12. Elephant Walk, LLC. Defendant Elephant Walk is a California limited liability company. According to the application Elephant Walk filed with the FCC to participate in Auction 66, its address is 75 Folsom Street, No. 1204, San Francisco, California 94105, a residence owned by Mr. Kumra. The application represented that Elephant Walk is 100 percent owned and controlled by Anisha Kumra, a real estate analyst, and that Elephant Walk has no other stockholders, members, officers, directors, or key personnel. Anisha Kumra is the daughter of Defendants Mr. and Mrs. Kumra. Elephant Walk is a development stage enterprise with no current business operations.

13. Kankakee Cellular, LLC. Defendant Kankakee Cellular is an Illinois limited liability company whose sole member is Defendant WAMI. Kankakee Cellular’s business address is the residence of Mr. and Mrs. Kumra, 18630 Withey Road, Monte Sereno, California 95030. Kankakee Cellular holds the Block A (non-wireline) cellular license issued by the FCC for the Kankakee, Illinois Metropolitan Statistical Area (“MSA”) (MSA273, FCC Call Sign KNKA668).

14. Wireless Asset Management, Inc. Defendant WAMI is a Delaware subchapter S corporation wholly-owned by Defendant Kumra. Its business address is Mr. and Mrs. Kumra’s residence, 18630 Withey Road, Monte Sereno, California 95030. WAMI is engaged in the consulting business.

15. Puneet Wadhwa. Defendant Wadhwa is a United States citizen whose business address is 319 Andrews Street, Los Gatos, California 95030. Mr. Wadhwa’s occupations have

included owning a start-up cosmetics business in which Defendant Kumra was the principal investor.

16. Club 42 CM Limited Partnership. Defendant Club 42 is a California limited partnership whose sole general partner is Defendant 700 Band, and whose limited partners include, among others, Defendant ECU. Its business address is 319 Andrews Street, Los Gatos, California 95030. Club 42 was formed for the purposes of bidding on and obtaining licenses in Auction 73.

17. 700 Band Management Company, L.P. Defendant 700 Band is a California limited partnership whose sole general partner is Defendant Wadhwa, and whose sole limited partner is Defendant ECU. 700 Band's business address is 319 Andrews Street, Los Gatos, California 95030. 700 Band was formed for the purpose of serving as the general partner and managing the business of Defendant Club 42.

18. Effective Communications Unlimited, LLC. Defendant ECU is a Nevada limited liability company whose sole member and owner is Defendant Kumra. Its business address is 319 Andrews Street, Los Gatos, California 95030.

III. JURISDICTION AND VENUE

19. This Court has jurisdiction over the subject matter of this action pursuant to both 28 U.S.C. § 1331 and 31 U.S.C. § 3732, the latter of which specifically confers jurisdiction on this Court for actions brought pursuant to 31 U.S.C. §§ 3729 and 3730.

20. This Court has personal jurisdiction over the Defendants pursuant to 31 U.S.C. § 3732(a), which authorizes nationwide service of process, and because the Defendants have minimum contacts with the United States. Moreover, all of the Defendants transact or have transacted business in this District. The FCC's headquarters, as well as the FCC's Wireless

Telecommunications Bureau, which has delegated authority over wireless licensing matters and spectrum auctions, are located at 445 12th Street SW, in the District of Columbia. The Defendants have used the FCC and its filing processes as an instrumentality of the fraud committed against the federal Government. Having committed the fraudulent acts as alleged in this complaint within the District of Columbia, the Defendants are subject to the jurisdiction of this Court.

21. Venue is proper in this District pursuant to 31 U.S.C. § 3732(a) because at least one Defendant can be found in, transacts or has transacted business in this District.

IV. BACKGROUND AND APPLICABLE LAW

A. The FCC's Auction Rules

22. In 1993, Congress amended the Communications Act of 1934, 47 U.S.C. § 151 et seq. (the "Communications Act") to authorize the FCC to select among mutually exclusive applications for wireless spectrum licenses using competitive bidding (auctions). Section 309(j) of the Communications Act grants the FCC express authority to employ competitive bidding procedures to choose from among two or more mutually exclusive applications for initial wireless spectrum licenses, and prohibits awarding licenses by random selection (lottery) if mutually exclusive applications were accepted after July 26, 1993. 47 U.S.C. § 309(j), added by Budget Act, Pub.L.No. 103-66, §6002(e), 107 Stat. 312, 397 (1993).

23. The Communications Act also directs the FCC to conduct auctions in a manner that provides incentives to promote economic opportunity and to foster participation by a broad cross-section of the American public. Congress meant to "ensur[e] that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small

businesses, rural telephone companies, and businesses owned by members of minority groups and women...." 47 U.S.C. § 309(j)(3)(B).

24. Title 47, Part 1 of the Code of Federal Regulations contains provisions implementing the FCC's auction authority. To ensure the integrity of its auctions, the FCC has adopted rules prohibiting collusive activity by applicants. Specifically, each applicant to participate in a spectrum auction must fully disclose to the FCC the real party or parties in interest to its application. 47 C.F.R. § 1.2112(a)(1). A "real party in interest" is a person or entity who has an interest or relationship that allows that person or entity to be in a position actually or potentially to control the operation of a license. In addition, an applicant must disclose all persons with whom it has entered into agreements or arrangements concerning bidding in the auction and must certify that it has no undisclosed agreements or arrangements. *Id.*, § 1.2105(a)(2)(viii). These disclosures and certifications are contained in an initial application to participate in a spectrum auction, referred to as the "Short-Form Application." *Id.*, § 1.2105(a)(2). The Short-Form Application must be signed by an authorized representative of the applicant, under penalty of perjury, as accurate and complete. After a Short-Form Application has been filed, the applicant is prohibited from collaborating or discussing its bidding strategies with any other applicant. *Id.*, § 1.2105(c).

25. The FCC also has adopted rules intended to encourage participation in spectrum auctions by women, minorities, and small businesses, by granting entities that qualify as a "small business" or "very small business" discounts of a specified percentage of the competitively-determined actual value, *i.e.*, the "gross" bid, of a license available for auction. The FCC uses a "revenue test" to determine whether an entity claiming entitlement to a discount is eligible.

26. For Auction 66 and Auction 73, FCC rules provided that a qualifying “small business” would receive a 15 percent discount off of its gross winning bids, and that an entity would be deemed to be a “small business” if the applicant, together with its affiliates, its controlling interest holders and their affiliates, had aggregate average annual gross revenues of not more than \$40 million for the preceding three years. *Id.*, § 1.2110(f)(2)(iii).

27. For Auction 66 and Auction 73, FCC rules further provided that a qualifying “very small business” would receive a 25 percent discount off of its gross winning bids, and that an entity would be deemed to be a “very small business” if the applicant, together with its affiliates, its controlling interest holders and their affiliates, had aggregate average annual gross revenues of not more than \$15 million for the preceding three years. *Id.*, § 1.2110(f)(2)(ii).

28. An applicant claiming “small business” or “very small business” status must certify that it is qualified to obtain a credit and must disclose all of its affiliates, controlling interests, and real parties in interest, and their gross revenues. *Id.*, § 1.2110(b)(1)(i), (iv). The FCC defines an “affiliate” as any individual or entity that (i) directly or indirectly controls or has the power to control the applicant, (ii) is directly or indirectly controlled by the applicant, (iii) is directly or indirectly controlled by a third party that also controls or has the power to control the applicant, or (iv) has an identity of interest with the applicant. *Id.*, § 1.2110(c)(5).

29. FCC rules require an auction applicant to attach to its Short-Form Application a statement, made under penalty of perjury, indicating whether or not the applicant, its affiliates, its controlling interests, or the affiliates of its controlling interests, have ever been in default on any Commission license or have ever been delinquent on any non-tax debt owed to any Federal agency. 47 C.F.R. § 1.2105(a)(2)(xi). An applicant, including its attributable interest holders, that has cured a default on a Commission license and has cured all outstanding non-tax

delinquencies owed to a Federal agency, including the FCC, prior to the deadline for filing a Short-Form Application to participate in a specific auction may be eligible to bid in that auction as a "former defaulter," provided the applicant is otherwise qualified. To participate in an auction as a former defaulter, applicants are required to pay upfront payments that are 50 percent more than the normal upfront payment amount established for each particular license. 47 C.F.R. § 1.2106(a).

30. After an auction ends, an applicant that was the high bidder on one or more licenses must complete and file with the FCC a Form 601, referred to as a Long-Form Application, and a Form 602, Ownership Disclosure. The Short-Form Application, Long-Form Application, and Form 602 must be signed by an authorized representative of the applicant as accurate and complete, under penalty of perjury. If the applicant is seeking bidding credits as a "very small business," the Short-Form and Long-Form Applications also must include certifications that the applicant is qualified to obtain such a credit, that all real parties in interest have been disclosed, and that annual gross revenues of the applicant, its affiliates, its controlling interests and their affiliates, have been disclosed.

31. To ensure that applicants claiming bidding credits are *bona fide*, federal law requires that the gross revenues of *de facto*, as well as *de jure*, affiliates and controlling interests be attributed to the applicant. *De jure* control typically is evidenced by ownership of more than 50 percent of an applicant's voting interests. In contrast, *de facto* control is determined based on all the circumstances of the particular case. The analysis of *de facto* control aims to ascertain whether, notwithstanding the existence of legal documents or other arrangements that place *de jure* control of an entity in the hands of one party, there exist relationships (*e.g.*, familial) or other factors that place actual control of the applicant in the hands of another.

32. Misrepresentations and false certifications in a Short-Form Application or Long-Form Application subject the applicant to penalties that include loss of existing licenses held by the applicant. If a licensee loses a license that it acquired in an auction, that license is subject to re-auction pursuant to the FCC's mandate to issue licenses through competitive bidding procedures.

33. Whenever discounted licenses are awarded to sham "very small businesses" that are controlled by ineligible entities and individuals, 100 percent of the bidding credit must be returned (plus interest).

34. A licensee that holds federal property and engages in fraudulent conduct, such as being an undisclosed real-party-in-interest to an application and concealing facts, must return the property. Based on the knowing false and fraudulent statements made by Defendants, they must surrender their FCC licenses so that those licenses may be publicly auctioned for the benefit of the U.S. Treasury.

B. The FCC's Cellular Service Rules

35. Title 47, Part 22, subpart H of the Code of Federal Regulations contains the FCC's licensing, technical and operational rules for the Cellular Radiotelephone Service. These rules, *inter alia*, specify the frequency bands allocated to the cellular service; establish minimum construction and coverage requirements for cellular licensees; and set forth service commencement criteria and technical rules for operations. These rules are intended to facilitate the provision of commercial wireless services to the general public by preserving and enhancing competition between service providers once licensed and by ensuring that available spectrum allocations are used efficiently.

36. The FCC began issuing licenses authorizing the provision of mobile services over cellular systems in 1982. The FCC first issued licenses for 306 MSAs, and subsequently issued licenses for 428 Rural Service Areas (“RSAs”). For each MSA and RSA, the FCC originally issued one “Block A” license and one “Block B” license, in order to provide for two competing, facilities-based providers offering service in each market.

37. For the largest 30 MSAs, which were the first markets to be licensed, the FCC used a comparative hearing process to select the licensee from among mutually exclusive applications. In the remaining markets, the FCC used a random selection process (lottery) to determine a licensee from among hundreds of mutually exclusive applications. The cellular licenses issued by the FCC to Defendants SLO Cellular and Kankakee Cellular were issued through the FCC’s lottery process.

38. As noted above, the FCC’s cellular service rules required licensees to satisfy construction and service commencement criteria. One obligation was to construct a system interconnected with the public switched telephone network (“PSTN”) and to provide mobile service to subscribers and roamers. *Id.*, § 22.946(b). A cellular system is considered to be providing service only if mobile stations can originate telephone calls to and receive telephone calls from wireline telephones through the PSTN. *Id.* Cellular service providers must provide service to at least one unaffiliated subscriber in order to be in compliance with the rules. “Service to subscribers” is defined as “[s]ervice to at least one subscriber that is not affiliated with, controlled by or related to the providing carrier.” *Id.*, § 22.99.

39. A cellular licensee may discontinue operations only for a limited period, or its license automatically terminates and becomes available for relicensing through the FCC’s auction procedures. Specifically, a station that has not provided service to subscribers for 90

continuous calendar days is deemed to be permanently discontinued, unless the licensee notified the FCC prior to the end of the 90-day period and provided a date on which operation would resume, which date may not be more than 30 additional days. *Id.*, § 22.317. When station operations are permanently discontinued, the license terminates automatically and reverts to the FCC. *Id.*, § 1.955(a)(3). The purpose of the rule is to prevent spectrum hoarding and to make unused spectrum available in an efficient manner for future use.

40. A license that has terminated is subject to relicensing under the FCC’s statutory auction authority.

C. The FCC’s Transfer of Control Rules

41. The Communications Act and FCC regulations require a licensee to obtain FCC approval before assigning or transferring control of any license issued by the FCC to provide wireless services, including PCS and cellular service. 47 U.S.C. § 310(d); 47 C.F.R. § 1.948(a). To obtain approval, the party seeking to transfer control (“transferor”) and the party seeking to obtain control (“transferee”) must file with the FCC Wireless Telecommunication Bureau a Form 603 Application (Application for Assignments of Authorization and Transfers of Control), and the transferee also must file a Form 602 (FCC Ownership Disclosure for the Wireless Telecommunications Services). 47 C.F.R. § 1.948(c). The transferee must fully disclose the real party or parties in interest to the application. *Id.*, § 1.2112(a)(1).

42. A transfer of control without FCC approval that involves fraudulent misrepresentation and concealment of facts results in loss of the property.

V. THE DEFENDANTS' FRAUD

A. The Defendants Falsely Certified Their Compliance with Auction Rules in Order to Obtain Government Benefits in Connection with Auction 66

43. Defendants Kumra, SLO Cellular, and Elephant Walk knowingly and purposefully concealed facts and made material misrepresentations to the FCC regarding SLO Cellular's and Elephant Walk's participation in Auction 66. Specifically, Defendants Kumra, SLO Cellular, and Elephant Walk violated the FCC's anti-collusion and real-party-in-interest rules because Kumra controlled both SLO Cellular's and Elephant Walk's Auction 66 activities and failed to disclose this to the FCC, and because each of SLO Cellular and Elephant Walk falsely certified that it was entitled to a bidding credit.

44. On June 19, 2006, Elephant Walk filed a Short-Form Application to participate in Auction 66 (FCC File No. 0002655638). Elephant Walk applied to bid on all 734 licenses available in Auction 66. The Elephant Walk Short-Form Application falsely asserted that Anisha Kumra was the sole owner of Elephant Walk, that Anisha Kumra was the sole real-party-in-interest to Elephant Walk's application, and that Elephant Walk had no affiliates and no agreements with other parties regarding Auction 66. In fact, it was Defendant Kumra who, without Anisha Kumra's knowledge or approval, formed Elephant Walk and was solely responsible for preparing and filing its Auction 66 Short-Form Application and funding its participation in Auction 66. Defendant Kumra also offered securities in Elephant Walk to numerous persons both inside and outside the United States. These offers themselves were fraudulent and in violation of the federal Securities Act of 1933, 15 U.S.C. § 77a et seq., and regulations promulgated thereunder by the Securities and Exchange Commission, as Kumra offered the same securities to different individuals but promised different rates of return.

45. Defendant Kumra fraudulently and knowingly caused Elephant Walk to fail to disclose that he was an affiliate and the real-party-in-interest of Elephant Walk. Defendant Kumra further fraudulently and knowingly caused Elephant Walk to fail to disclose the gross revenues of his affiliates, which included Defendants SLO Cellular, Entertainment Unlimited, Kankakee Cellular, and WAMI, for purposes of seeking a 25 percent bidding discount. Disclosure of those affiliates and their revenues would have demonstrated that Elephant Walk was not entitled to a bidding discount. Defendant Kumra also fraudulently and knowingly caused Elephant Walk to fail to disclose that he was the real-party-in-interest of Elephant Walk, in order to avoid payment by Elephant Walk of the higher upfront payment required of former defaulters.

46. SLO Cellular also filed on June 19, 2006, a Short-Form Application (FCC File No. 0002655625) to participate in Auction 66. SLO Cellular applied to bid on 591 of the licenses available in Auction 66, all of which Elephant Walk also applied to bid on. The SLO Cellular Short-Form Application fraudulently and knowingly failed to disclose that Defendant Elephant Walk was an affiliate of Defendant Kumra and fraudulently and knowingly failed to disclose agreements regarding bidding in Auction 66 entered into between Elephant Walk and Western Cellular, Kumra's wholly-owned company. Seeking to obtain a 15 percent bidding discount, SLO Cellular and Kumra also fraudulently and knowingly failed to disclose all of the gross revenues of Kumra's affiliates. Full disclosure of those affiliates' revenues would have demonstrated that SLO Cellular was not entitled to a bidding discount.

47. Defendant Kumra also knowingly and willfully caused both Elephant Walk and SLO Cellular fraudulently to conceal Kumra's control of Elephant Walk, in order to manipulate the results of Auction 66 in violation of federal law.

48. The Defendants knowingly and willfully concealed material information that was required to be disclosed to the FCC in connection with Auction 66. Defendants' acts and omissions were intended to defraud the federal Government by improperly claiming bidding credits to which only "small businesses" or "very small businesses" may claim entitlement, and for which Defendants could not lawfully qualify.

B. The Defendants Entered Into Sham Transfers of Assets to Conceal Their Prior Fraud and Retain Their FCC Licenses

49. Kumra, knowing that his actions in connection with Auction 66 subjected him and other Defendants to loss of their existing FCC licenses and other substantial civil and criminal penalties, attempted to cover up the fraud in order to avoid those penalties, and in so doing committed additional fraud. Specifically, after the Short-Form Application filings in Auction 66, the Defendants entered into sham transactions and purported to transfer control of the existing SLO Cellular and Entertainment Unlimited licenses from Mr. Kumra to Mrs. Kumra, in violation of federal law and for the purpose of retaining the licenses and avoiding liability for their prior actions.

50. On August 7, 2006, Mr. Kumra and Mrs. Kumra, as transferor and transferee, respectively, filed an application (FCC File No. 0002699597) requesting approval to transfer control of SLO Cellular and its license ("the SLO Cellular Transfer Application"). In reliance on representations made in the SLO Cellular Transfer Application, the FCC granted the application effective August 11, 2007. According to a report filed with the FCC on August 29, 2006, the transfer was consummated on August 27, 2006. The purported transfer consisted of a "gift" of all of the stock of SLO Cellular from Mr. Kumra to Mrs. Kumra.

51. Also on August 7, 2006, Mr. Kumra and Mrs. Kumra, as transferor and transferee, respectively, filed an application (FCC File No. 0002699631) requesting approval to transfer

control of Entertainment Unlimited, Inc., and its PCS licenses (“the Entertainment Unlimited Transfer Application”). In reliance on representations made in the Entertainment Unlimited Transfer Application, the FCC granted the application effective August 8, 2006. According to a report filed with the FCC on October 10, 2006, the transfer was consummated on September 20, 2006. The purported transfer consisted of a “gift” to Mrs. Kumra of all of Mr. Kumra’s interests in the licenses and other assets of Entertainment Unlimited. FCC records reflect that the licenses presently are in the name of Harinder R. Kumra d/b/a Entertainment Unlimited.

52. Defendants’ notices to the FCC that Mrs. Kumra assumed control of the SLO Cellular license effective August 27, 2006, and of the Entertainment Unlimited licenses effective September 20, 2006, were false. Defendant Kumra continues to control the operations, finances, and other business and regulatory matters, including the FCC licenses, of both SLO Cellular and Entertainment Unlimited.

53. Recent FCC filings by Mrs. Kumra and Entertainment Unlimited that seek the renewal of four of the Entertainment Unlimited PCS licenses falsely certified that Entertainment Unlimited has fully disclosed its ownership to the FCC.

54. The Defendants’ fraudulent actions with respect to SLO Cellular and Entertainment Unlimited were undertaken for the purpose of preventing the loss of the FCC licenses held by those companies. Those licenses, which have a value of between approximately \$47 million and approximately \$82 million, should revert to the FCC to be auctioned.

C. The Defendants Falsely Represented the Operational Status of the Kankakee Cellular System in Order to Retain the License

55. In 2003, Cingular, the holder of a cellular license for the Chicago, Illinois MSA, immediately adjacent to the Kankakee MSA, entered into a Switching Services Agreement and a Roaming Agreement with Kankakee Cellular, to replace similar, prior agreements that were

expiring. By their terms, the Switching Services Agreement was to expire on August 31, 2006, and the Roaming Agreement was to expire on October 31, 2006.

56. The Switching Services Agreement and the Roaming Agreement were critical for Kankakee Cellular's operations. The Switching Services Agreement gave Kankakee Cellular access to Cingular's switch, without which Kankakee Cellular had no ability to provide service to customers. The Roaming Agreement gave Kankakee Cellular access to Cingular's subscribers who were traveling in the Kankakee MSA. Access to those roaming customers was necessary because Kankakee Cellular had no subscribers of its own. In contrast, Cingular made clear at the time it entered into these agreements in 2003 that it expected to make little, if any, use of the Kankakee Cellular "system" and that it had no interest in continuing a business relationship with Kankakee Cellular once the agreements expired. Cingular recently had entered into an agreement with AT&T Wireless, which held a wireless license to provide services within the Kankakee market, that required the two companies to roam on each other's systems wherever possible and to set lower rates for the reciprocal roaming relationship than Cingular was paying to Kankakee Cellular. Consequently, Cingular had little ongoing need for Kankakee Cellular as a roaming partner in the Kankakee market.

57. On or about October 26, 2004, Cingular merged with AT&T Wireless. As a result of that merger, Cingular had its own facilities in the Kankakee market. Following the merger, few Cingular customers, if any, utilized Kankakee Cellular's system.

58. On February 3, 2006, Cingular sent Kumra and Kankakee Cellular written notice of termination of both the Switching Services Agreement and the Roaming Agreement, effective September 1, 2006.

59. In a letter to Kumra dated August 31, 2006, Cingular clarified that the Roaming

Agreement would terminate by its terms on November 1, 2006, rather than August 31, and confirmed that the Switching Services Agreement would terminate by its terms on September 1, 2006.

60. During the approximately seven months between February 3, 2006, and August 31, 2006, Kumra failed to take the steps necessary to ensure that the Kankakee Cellular system would remain operational upon expiration of the Switching Services Agreement.

61. On September 1, 2006, the Switching Services Agreement between Kankakee Cellular and Cingular terminated, and Cingular removed Kankakee Cellular's System Identification information from Cingular's switch and disconnected the leased lines terminating at Cingular's switch. As a result, beginning September 1, 2006, the Kankakee Cellular system was unable to use the Cingular switch and unable to complete calls to and from the PSTN.

62. Effective November 1, 2006, the Roaming Agreement between Kankakee Cellular and Cingular expired. Beginning on that date, even if Kankakee Cellular had preserved the ability to complete calls, it no longer had access to any unaffiliated customers, even on a roaming basis. Cingular had been Kankakee Cellular's only unaffiliated roaming partner and Kankakee Cellular still had no subscribers of its own.

63. After the Switching Services Agreement and the Roaming Agreement terminated, Kumra took no immediate action to reinstate service capabilities to Kankakee Cellular, or to obtain an unaffiliated customer.

64. The Kankakee Cellular system remained non-operational and did not provide service to subscribers for the entire 90-day period between September 1, 2006, and December 1, 2006, and thereafter. Kankakee Cellular did not notify the FCC prior to December 1, 2006, or request additional time to resume operations. Thus, the Kankakee Cellular license terminated by

operation of law, effective December 2, 2006.

65. On or after January 1, 2007, Defendant Kumra filed or caused to be filed with the FCC a statement falsely claiming that Kankakee Cellular had ceased operations on or about November 15, 2006. The Defendants did not disclose that Kankakee Cellular in fact had been unable to complete calls and had not completed calls since September 1, 2006. By the time Kumra caused this statement to be filed with the FCC, Kankakee Cellular's license had terminated automatically.

66. Defendants Kankakee Cellular, WAMI, and Kumra failed to restore service within 90 days from the date the Switching Services Agreement terminated and the Kankakee Cellular system lost the ability either to place a call to or to receive a call placed from the PSTN.

67. Defendant Kumra knowingly and willfully lied to the FCC when, in order to conceal the truth from the FCC, he falsely stated that Kankakee Cellular had become unable to complete calls on or about November 15, 2006. Kumra also knew, but did not disclose, that since entering into the 2003 agreement with Cingular, there had been previous 90-day periods during which Kankakee Cellular had not served a single customer. Kumra was fully aware that Kankakee Cellular had not been operational since September 1, 2006, and he also knew that since the expiration of the Roaming Agreement with Cingular on November 1, 2006, Kankakee Cellular had no basis for claiming that it had the required minimum of one unaffiliated customer. When Kumra knowingly made the false filing with the FCC regarding the loss of connection to the PSTN, he also deliberately withheld this information.

68. The Defendants' fraudulent actions with respect to Kankakee Cellular were undertaken for the purpose of preventing the loss of the benefits of its FCC license. That license,

which has a value of between \$5 million and \$10 million, should revert to the FCC to be auctioned.

D. The Defendants Falsely Certified Their Compliance with Auction Rules in Order to Obtain Government Benefits in Connection with Auction 73

69. Defendants Kumra, Wadhwa, Club 42, 700 Band, and ECU knowingly and purposefully concealed facts and made material misrepresentations to the FCC regarding their qualifications to obtain bidding credits in Auction 73. Specifically, Defendants Kumra and Wadhwa violated the FCC's real-party-in-interest, ownership disclosure, and other applicable rules because they failed to disclose that they are affiliates, failed to disclose the revenues of entities controlled by Kumra, falsely certified that Club 42 was entitled to a bidding credit, and falsely certified as to their "former defaulter" status.

70. On December 3, 2007, Club 42 filed a Short-Form Application to participate in Auction 73 (FCC File No. 0003248053). The Club 42 Short-Form Application falsely asserted that Defendant Wadhwa was the sole attributable owner of Club 42, and that Club 42 had no affiliates and no agreements with other parties regarding Auction 73.

71. Auction 73 concluded on March 18, 2008. On March 20, 2008, the FCC issued a Public Notice announcing that Club 42 was the high bidder on six licenses, with gross high bids of \$2,227,000; establishing April 3, 2008, as the deadline for the filing of its Long-Form Application and Form 602; and establishing April 17, 2008, as the deadline for Club 42 to make final payment which, after a 25 percent bidding discount, totaled \$1,670,250.

72. On April 3, 2008, Club 42 submitted two Long-Form Applications (one application for four licenses, and a second application for two licensees) and Form 602. These filings identified Club 42 as a limited partnership, with a single general partner, Defendant 700 Band, with a 5.5556 percent ownership interest, and ten limited partners having ownership

interests ranging between 5.5556 percent and 18.0556 percent. These filings further disclosed that Defendant 700 Band has one general partner (Defendant Wadhwa, with 15 percent ownership), and one limited partner (Defendant ECU, with 85 percent ownership); that Defendant ECU also is one of the ten limited partners, and that Defendant Kumra owns 100 percent of ECU.

73. On April 22, 2008, the FCC released a Public Notice announcing that Club 42's Long-Form Applications (File Nos. 0003383865 and 0003383873) had been accepted for filing, indicating that Club 42 timely filed those applications and timely made its final payment on the licenses on which it was the high bidder in Auction 73.

74. The Defendants fraudulently and knowingly caused Club 42 to fail to disclose in its Short-Form and Long-Form Applications the close business and personal ties between Defendant Kumra and Defendant Wadhwa. Wadhwa and Kumra have a longstanding business and personal relationship. For example, in 2002, Kumra was the primary investor in a company founded by Wadhwa called Umaveda, a startup whose planned business was to import and sell cosmetic products from India. Wadhwa has worked under the direction and control of or as an agent for Kumra, for example, in valuing certain of Defendants' FCC licenses for a potential sale, both prior to and after December 3, 2007.

75. The Defendants fraudulently and knowingly caused Club 42 to fail to disclose in its Short-Form and Long-Form Applications Defendant Kumra's close ties to other Club 42 limited partners, who include his brother and brother-in-law. A limited partner identified in Club 42's Short-Form Application, but not its Long-Form Applications, is a trust established by Defendant Kumra for the benefit of his daughters.

76. The Defendants fraudulently and knowingly caused Club 42 to fail to disclose in its FCC filings that Defendant Kumra is the real-party-in-interest to Club 42 and has *de facto* control over the company.

77. The Defendants fraudulently and knowingly caused Club 42 to fail to disclose in its Short-Form and Long-Form Applications the existence and gross revenues of Kumra's affiliates, including but not limited to SLO Cellular, Entertainment Unlimited, Kankakee Cellular, and WAMI. Disclosure of those affiliates, and their gross revenues, would have demonstrated that Club 42 was not entitled to a bidding discount.

78. The Defendants fraudulently and knowingly caused Club 42 to fail to disclose in its Short-Form Application its status as a former defaulter, and to fail to pay the additional upfront payment amount required from former defaulters.

79. The Defendants knowingly and willfully concealed material information that was required to be disclosed to the FCC in connection with Auction 73. Defendants' acts and omissions were intended to defraud the federal Government by improperly claiming bidding credits to which only *bona fide* "very small businesses" may claim entitlement, and for which Defendants could not lawfully qualify.

COUNT ONE
FALSE CLAIMS ACT – 31 U.S.C. § 3729(a)(1)

80. Plaintiffs-Relators Kaffee and Rodriguez re-allege and incorporate by reference the allegations contained in paragraphs 1 through 79 of this Complaint.

81. This is a claim for treble damages and forfeitures under the False Claims Act, 31 U.S.C. § 3729, et seq., as amended.

82. By virtue of the acts described above, the Defendants knowingly presented, or caused to be presented, false or fraudulent claims for payment or approval to the United States Government, and knowingly failed to disclose material facts, in order to induce Government approval or payment.

83. By reason of this fraud, the United States has been damaged, and continues to be damaged, in substantial amount.

COUNT TWO
FALSE CLAIMS ACT – 31 U.S.C. § 3729(a)(2)

84. Plaintiffs-Relators Kaffee and Rodriguez re-allege and incorporate by reference the allegations contained in paragraphs 1 through 83 of this Complaint.

85. This is a claim for treble damages and forfeitures under the False Claims Act, 31 U.S.C. § 3729, et seq., as amended.

86. By virtue of the acts described above, the Defendants knowingly made, used, or caused to be made or used false records and statements, and omitted material facts to the United States Government in order to induce the Government to pay or approve false and fraudulent claims.

87. By reason of this fraud, the United States has been damaged, and continues to be damaged, in substantial amount.

COUNT THREE
FALSE CLAIMS ACT – 31 U.S.C. § 3729(a)(3)

88. Plaintiffs-Relators Kaffee and Rodriguez repeat and re-allege and incorporate by reference the allegations contained in paragraphs 1 through 87 of this Complaint.

89. This is a claim for treble damages and forfeitures under the False Claims Act, 31 U.S.C. § 3729 et seq., as amended.

90. By virtue of the acts described above, the Defendants conspired to defraud the United States by inducing the Government to pay or approve false and fraudulent claims. Defendants, moreover, took substantial steps in furtherance of the conspiracy, including, *inter alia*, by making fraudulent representations, by preparing fraudulent records, and by failing to disclose material facts to the United States Government.

91. By reason of the foregoing, the United States has been damaged, and continues to be damaged, in substantial amount.

COUNT FOUR
FALSE CLAIMS ACT – 31 U.S.C. § 3729(a)(7)

92. Plaintiffs-Relators Kaffee and Rodriguez repeat and re-allege and incorporate by reference the allegations contained in paragraphs 1 through 91 of this Complaint.

93. This is a claim for treble damages and forfeitures under the False Claims Act, 31 U.S.C. § 3729 *et seq.*, as amended.

94. By virtue of the acts described above, the Defendants knowingly made, used, or caused to be made or used, false or fraudulent records or statements to the United States Government in order to conceal, avoid or decrease an obligation to pay or transmit money or property to the federal Government.

95. By reason of the Defendants' fraudulent concealment and/or avoidance, the United States has been damaged, and continues to be damaged, in substantial amount.

PRAYER

WHEREFORE, Plaintiffs-Relators Kaffee and Rodriguez pray for judgment against the Defendants as follows:

1. that the Defendants cease and desist from violating 31 U.S.C. § 3729 *et seq.*;

2. that this Court enter judgment against the Defendants in an amount equal to three times the amount of damages the United States has sustained because of the Defendants' actions, plus a civil penalty of not less than \$5,000 and not more than \$10,000 for each violation of 31 U.S.C. § 3729;

3. that Plaintiffs-Relators be awarded the maximum amount allowed pursuant to Section 3730(d) of the False Claims Act, 31 U.S.C. § 3730(d).

4. that Plaintiffs-Relators be awarded all costs of this action, including attorneys' fees and expenses; and

5. that the United States and Plaintiffs-Relators recover such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs-Relators hereby demand a trial by jury.

By: _____



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Dated: May 1, 2008

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of May, 2008, I caused to be served by first class mail, postage prepaid, a true and correct copy of the foregoing Amended Complaint upon:

Paul Mussenden
Assistant United States Attorney
United States Attorney's Office
501 3rd Street NW
Washington, DC 20530

Gordon Jones
U.S. Department of Justice
Civil Division, Commercial Frauds Section
P.O. Box 261
Ben Franklin Station
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