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

KENNETH C. BROOKS,

Plaintiff,

v.

DUNLOP MANUFACTURING INC.,

Defendant.

No. C 10-04341 CRB

**ORDER GRANTING DEFENDANT’S
MOTION TO LIFT STAY AND
DISMISS**

Plaintiff Kenneth C. Brooks filed this false patent marking action against Defendant Dunlop Manufacturing, Inc. in October 2010 under 35 U.S.C. § 292 as a *qui tam* relator.¹ The action was stayed in June 2011 pending the Federal Circuit’s determination of the constitutionality of § 292 in FLFMC, LLC v. Wham-O, Inc., Appeal No. 2011-1067. Recently, however, the Federal Circuit dismissed the Wham-O appeal in light of the passage of the Leahy-Smith America Invents Act (“AIA”), Pub. L. No. 112-29, 125 Stat. 284 (2011), which was signed into law on September 16, 2011. See FLFMC, LLC v. Wham-O, Inc., No.

¹ 35 U.S.C. § 292 formerly included a private right of action through a *qui tam* provision that allowed any private individual to sue manufacturers who labeled their products with false or expired patent numbers “for the purpose of deceiving the public.” If the plaintiff won the lawsuit, he would split the penalty or settlement proceeds with the Government. After the Federal Circuit’s decision in Forest Group, Inc. v. Bon Tool Co., 590 F.3d 1295, 1303 (Fed. Cir. 2009) (interpreting false marking statute as providing for \$500 fine per infringing item and dismissing concerns about thereby creating ‘a new cottage industry’ of false marking litigation”), a cottage industry of false marking litigation quickly developed. See, e.g., Texas Data Co., LLC v. Target Brands, Inc., 771 F. Supp. 2d 630, 634-35 (E.D. Tex 2011) (“Naturally, after the Forest Group decision, filings of false patent marking cases exploded. In the year 2010 alone, this Court has had over one hundred filings of false patent marking cases, and this Court had few, if any, filings before this year.”).

1 2011-1067, 2011 WL 4952991 (Fed. Cir. Oct. 19, 2011). The AIA makes substantial
2 amendments to the Patent Act (35 U.S.C. § 1 et seq.), including to the false marking statutes
3 in § 292. Dunlop has now moved to lift the stay and dismiss Plaintiff’s claims under Rule
4 12(c), arguing that under the new provisions in the AIA, Plaintiff’s claims are no longer
5 actionable. Plaintiff does not oppose lifting the stay and concedes that the AIA eliminates
6 his standing to bring this false marking action. However, Plaintiff argues that the AIA
7 amendments to § 292 are void because their elimination of Plaintiff’s cause of action
8 constitutes a taking without just compensation in violation of the Fifth Amendment. Plaintiff
9 further argued at the hearing on this motion and in supplemental briefing that the retroactive
10 application of the amendments also violates the Due Process Clause of the Fifth Amendment.
11 Because these arguments fail for the reasons set forth below, Defendant’s Motion to Lift the
12 Stay and Dismiss Brooks’s Claims Pursuant to Federal Rule 12(c) (dkt. 45) is GRANTED.

13 **I. BACKGROUND**

14 On September 12, 2010, Brooks purchased a Dunlop guitar gel winder from a store in
15 San Jose, California called Guitar Showcase. Compl. ¶ 9 (dkt. 12). The product was marked
16 with the patent number 3,706,254. *Id.* Brooks alleges both that patent number 3,706,254
17 expired on December 19, 1989, *id.* ¶ 10, and that the same patent was found invalid by the
18 Central District of California, which was affirmed by the Ninth Circuit, *id.* ¶ 11 (citing *Astro*
19 *Music, Inc. v. Eastham*, 564 F.2d 1236 (9th Cir. 1977)). He further alleges that, “[u]pon
20 information and belief, [Dunlop] is a sophisticated company that has many decades of
21 experience with patents,” *id.* ¶ 15, that “upon information and belief the decision to falsely
22 mark said product with said patent was undertaken for purposes of deception so that the
23 public and/or potential competitors would be placed at an unfair disadvantage when making
24 determinations as to how to participate in the marketplace and, therefore, provide [Dunlop]
25 with unfair pricing advantage,” *id.* ¶ 17; *see also id.* ¶ 20 (making substantially similar
26 allegation). Brooks filed his amended complaint in October 2010. *See* Compl. Dunlop
27 moved to dismiss. *See* dkt. 13. The Court denied the Motion from the bench. *See* 1/7/11
28

1 Minutes (dkt. 20). The parties participated in a settlement conference, but did not settle.

2 See 3/24/11 Minutes (dkt. 35).

3 On March 23, 2011, Dunlop moved again to dismiss under Federal Rule of Civil
4 Procedure 12© or, in the alternative, to stay the action pending the Federal Circuit’s decision
5 on the constitutionality of the false marking statute (35 U.S.C. § 292) in FLFMC, LLC v.
6 Wham-O, Inc., Appeal No. 2011-1067. Dkt. 32. At the hearing on Dunlop’s Motion on May
7 6, 2011, the Court granted the Motion to Stay. 5/6/11 Minutes (dkt. 42). Thereafter the U.S.
8 Government intervened in the case “to defend the [false patent marking] statute against
9 [Dunlop’s] argument that the statute is unconstitutional.” U.S. Notice (dkt. 43) at 2.
10 However, because the Court had stayed consideration of the constitutionality issue, the
11 Government stated that it would “not file a substantive brief on the constitutional question
12 until such time as the Court requests such a filing or until such time that the United States
13 deems it appropriate to present its views on the issue.” Id. The Court issued an Order
14 granting the stay on June 20, 2011. See 6/20/11 Order (dkt. 44). Now, Dunlop has filed a
15 Motion to Lift the Stay and Dismiss Brooks’s Claims Pursuant to Federal Rule of Civil
16 Procedure 12© (“Mot.”) in light of the new amendments to the false marking statute.

17 On September 16, 2011, the President signed into law the Leahy-Smith America
18 Invents Act (“AIA”), which makes substantial amendments to the Patent Act (35 U.S.C. § 1
19 et seq.). See Pub. L. No. 112-29, 125 Stat. 284 (2011). Particularly, the AIA includes
20 significant changes to § 292 that Dunlop argues “immediately and retroactively eliminate
21 Brooks’s false marking claims.” Mot. at 2. The false marking amendments in the AIA are as
22 follows:

23 SEC. 16. MARKING

24 ... (b) FALSE MARKING –

25 (1) CIVIL PENALTY. – Section 292(a) of title 35, United States
26 Code is amended by adding at the end the following: “Only the United States
may sue for the penalty authorized by this subsection.”.

27 (2) CIVIL ACTION FOR DAMAGES. – Subsection (b) of
28 section 292 of title 35, United States Code, is amended to read as follows: “(b)
A person who has suffered a competitive injury as a result of a violation of this
section may file a civil action in a district court of the United States for

1 recovery of damages adequate to compensate for the injury.”.

2 (3) EXPIRED PATENTS. – Section 292 of title 35, United States
3 Code, is amended by adding at the end the following: “© The marking of a
4 product, in a manner described in subsection (a), with matter relating to a
5 patent that covered that product but has expired is not a violation of this
6 section.”.

7 (4) EFFECTIVE DATE. – The amendments made by this
8 subsection shall apply to all cases, without exception, that are pending on, or
9 commenced on or after, the date of the enactment of this Act.

10 Pub. L. No. 112-29 §§ 16(b)(1)-(4) (emphasis added).

11 Dunlop argues that because the “amendments took effect for all pending cases upon
12 the AIA’s enactment, which is September 16, 2011, Brooks’s false patent marking claims
13 against Dunlop require immediate dismissal.” Mot. at 3. According to Dunlop, the AIA
14 destroys Brooks’s false marking claims because (1) Section 16(b)(1) of the AIA eliminates
15 Brooks’s standing to sue as a relator for the penalty provided in the false marking statute, (2)
16 Brooks cannot bring a false marking action for damages under § 16(b)(2) because he is not a
17 competitor of Dunlop, and (3) marking a product with an expired patent that at one time
18 covered the product is no longer actionable as provided in § 16(b)(3). Id. Dunlop also
19 submits a September 20, 2011 letter from Brooks’s attorney to the U.S. Attorney’s office in
20 which “Brooks concedes that he has no actionable claims against Dunlop as a result of the
21 AIA’s enactment and invites the Government to proceed in his place.” See Bibby Decl. Ex.
22 C. Indeed in his Statement of Non-Opposition to Lift Stay and Opposition to Defendant’s
23 Motion to Dismiss (“Opp’n”), Brooks agrees with Dunlop that the AIA “retroactively
24 dispens[es] with *qui tam* [false patent marking] actions” and does not argue that he is a
25 competitor of Dunlop. Opp’n (dkt. 47) at 2, 7.

26 Furthermore, since this motion was filed, the Federal Circuit has dismissed the Wham-
27 O appeal in light of the amendments to the false marking statute. See No. 2011-1067, 2011
28 WL 4952991 (Fed. Cir. Oct. 19, 2011). The Wham-O parties agreed that the passage of the
AIA, by eliminating the *qui tam* provision on which the case was predicated, rendered the
case moot. Id. at *1. However, the Federal Circuit noted that “[t]he parties do not challenge,

1 and this court does not address, the constitutionality of the retroactive application of the
2 amendments to § 292.” Id.

3 Here, Brooks does challenge the constitutionality of the AIA amendments to the false
4 marking statute. Brooks argues that Dunlop’s motion to dismiss should be denied because
5 the retroactive application of the false marking amendments constitutes “an unprecedented
6 act of legislative piracy,” in which “Congress has seen fit to completely destroy [Brooks’s]
7 property interest” without providing just compensation. Opp’n at 2-3. In his papers Brooks
8 argued that the AIA amendments operate as an unconstitutional “taking of property” in
9 violation of the Fifth Amendment and are therefore void. Id. at 4-5. Plaintiff filed a notice
10 challenging the constitutionality of the AIA with the Court and with the U.S. Attorney. See
11 Dkt. 48. The Government filed a Statement of Non-opposition to Defendant’s Motion to Lift
12 Stay and Dismiss Suit (dkt. 52) stating that, at this time, “it does not, and would not, object to
13 the dismissal of Plaintiff’s lawsuit.” See U.S. Non-Opp’n at 1-2.

14 At the hearing on this motion, Plaintiff Brooks also introduced, for the first time, the
15 argument that, by eliminating his cause of action, the retroactive application of the false
16 marking amendments repudiated a contractual obligation that the Government owed to
17 Brooks and violated the Due Process Clause of the Fifth Amendment. The Court requested
18 supplemental briefing on the issue and all parties (Brooks, Dunlop, and the Government)
19 responded.

20 **II. LEGAL STANDARD**

21 The Court has the authority to lift the stay in this case. Courts may modify their
22 interlocutory orders prior to the entry of judgment. See Marconi Wireless Telegraph Co. v.
23 United States, 320 U.S. 1, 47-48 (1943).

24 Under Federal Rule of Civil Procedure 12(c), “[a]fter the pleadings are closed but
25 within such time as not to delay the trial, any party may move for judgment on the
26 pleadings.” Rules 12(b)(6) and 12(c) are substantially identical. See William W. Schwarzer,
27 A. Wallace Tashima & James M. Wagstaffe, Federal Civil Procedure Before Trial § 9:319.
28 Under both, a court must determine whether the facts alleged in the complaint, taken as true,

1 entitle the plaintiff to a legal remedy. Id. If the complaint fails to articulate a legally
2 sufficient claim, the complaint should be dismissed or judgment granted on the pleadings. Id.
3 “A judgment on the pleadings is properly granted when, taking all the allegations in the
4 pleading as true, the moving party is entitled to judgment as a matter of law.” Nelson v. City
5 of Irvine, 143 F.3d 1196, 1200 (9th Cir. 1998).

6 **III. DISCUSSION**

7 The parties do not dispute and correctly conclude that the AIA amendments to § 292
8 have retroactive effect. See Pub. L. No. 112-29 § 16(b)(4) (“The amendments made by this
9 subsection shall apply to all cases, without exception, that are pending on, or commenced on
10 or after, the date of the enactment of this Act.”); Seirus Innovative Accessories, Inc. v.
11 Cabela’s Inc., Case No. 09-CV-102 H, (dkt. 429 at 3) (S.D. Cal. Oct. 19, 2011) (“Congress’
12 intent that the AIA [amendments to § 292] apply retroactively is clear on the face of the
13 amendment . . .”). The parties also do not dispute and again are correct in concluding that the
14 AIA amendments eliminate Brooks’s standing to bring this action. The amendments
15 eliminate the ability for individuals like Brooks to join as *qui tam* relators in action for false
16 patent marking and provide that “[o]nly the United States may sue for the penalty authorized
17 by [§ 292]. Pub. L. No. 112-29 § 16(b)(1). Brooks is also not a competitor of Dunlop, and
18 therefore would not be able to show that he suffered a “competitive injury” as a result of any
19 act of false marking by Dunlop. See Opp’n at 7 (admitting that Brooks is not a competitor of
20 Dunlop); Pub. L. No. 112-29 § 16(b)(2) (“A person who has suffered a competitive injury as
21 a result of a violation of [§ 292] may file a civil action . . .”). Thus absent a valid
22 constitutional challenge, the AIA amendments would require the dismissal of Plaintiff’s
23 action, as he lacks standing and cannot articulate a legally sufficient claim for false patent
24 marking. See Fed. R. Civ. P. 12(c).

25 **1. The retroactive application of the false marking amendments in the AIA** 26 **does not violate Due Process**

27 Brooks argued for the first time at the motion hearing and in his supplemental brief
28 that the amendments to the false marking statute are void because their retroactive
application violates due process. See Realtor’s Supp. Brief at 2-7. As retroactive legislation

1 has the potential to compromise “the interests in fair notice and repose,” such legislation
2 must meet the test of Due Process. See Landgraf v. USI Film Prods., 511 U.S. 244, 266
3 (1994). The due process standard “generally applicable to retroactive economic legislation”
4 is that “the retroactive application of a statute [must be] supported by a legitimate legislative
5 purpose furthered by rational means.” United States v. Carlton, 512 U.S. 26, 30-31 (1994).

6 Brooks argues that the amendments to the AIA go beyond merely “readjusting
7 [economic] rights and burdens” by repudiating a unilateral contract that the government
8 entered into when it offered the *qui tam* false marking action to individuals, and Brooks
9 accepted by filing the instant suit. See Relator’s Supp. Brief (dkt. 57) at 5-6. Brooks argues
10 that because of this, the retroactive application of the false marking amendments should be
11 held to a higher standard of scrutiny. See id. The Government denies that there is, or ever
12 was any such contract. US Supp. Brief (dkt. 55) at 1. However, the Court need not address
13 whether a binding contract was actually formed, as Brooks submits no legal authority, and
14 the Court has found none, that would require a higher standard of scrutiny to be applied even
15 if a contract had been formed. See Relator’s Supp. Brief at 6. Indeed it seems clear that
16 amending a statute that once provided an economic benefit to individuals who chose to take
17 advantage of a *qui tam* provision falls within the category of Congressional actions where
18 “the burden is on one complaining of a due process violation to establish that the legislature
19 has acted in an arbitrary and irrational way.” See Usery v. Turner Elkhorn Mining Co., 428
20 U.S. 1, 15 (1976) (“It is by now well established that legislative Acts adjusting the burdens
21 and benefits of economic life come to the Court with a presumption of constitutionality.”).

22 The Court finds that Congress, by eliminating the *qui tam* provision in § 292,
23 rationally furthered a legitimate legislative purpose by comprehensively reducing the costs
24 and inefficiencies associated with the “cottage industry” of false marking litigation that
25 developed after the Federal Circuit’s decision in Forest Group, Inc., 590 F.3d 1295. See
26 Landgraf, 511 U.S, at 267-68 (“Retroactivity provisions often serve entirely benign and
27 legitimate purposes [including] giv[ing] comprehensive effect to a new law Congress
28

1 considers salutary.”). Accordingly, the retroactive amendments to the false statute in the AIA
2 do not violate due process.

3 **2. This Court cannot invalidate the amendments to the AIA under the theory**
4 **that they operate as an unconstitutional taking before Brooks has brought**
5 **his takings claim against the United States**

6 Brooks argued in his papers that the AIA amendments are also void because, by
7 retroactively eliminating his cause of action, they operate as an unconstitutional “taking of
8 property” by the government in violation of the Fifth Amendment. Opp’n at 4-5. However,
9 Brooks fails to appreciate that, even assuming the amendments do effectuate a taking, they
10 will not be found immediately void so long as the government “provide[s] an adequate
11 process for obtaining compensation.” Williamson County Reg’l Planning Comm’n v.
12 Hamilton Bank of Johnson City, 473 U.S. 172, 194 (1985); Bay View, Inc. v. Ahtna, Inc.,
13 105 F.3d 1281, 1285 (9th Cir. 1997) (“[T]he government need not provide immediate
14 compensation at the time of the taking; it must simply ‘provide[] an adequate process for
15 obtaining compensation.’”).

16 The government has provided such a compensation process by consenting to suit in
17 the United States Court of Federal Claims under the Tucker Act, 28 U.S.C. § 1491(a)(1).
18 See id. at 1285. The Tucker Act grants jurisdiction to the Court of Federal Claims to “render
19 judgment upon any claim against the United States founded . . . upon the Constitution.” 28
20 U.S.C. § 1491(a)(1). The government has also consented to suit in either the Court of
21 Federal Claims or the Federal District Courts for claims seeking \$10,000 or less under the
22 Little Tucker Act, 28 U.S.C. § 1346(a)(2). “If the government has provided an adequate
23 process for obtaining compensation, and if resort to that process yields just compensation,
24 then the property owner has no claim against the government for a taking . . . For this reason,
25 takings claims . . . are premature until the property owner has availed itself of the process
26 provided by the Tucker Act.” Preseault v. I.C.C., 494 U.S. 1, 11 (1990) (internal citations
27 omitted). Brooks has not yet sought compensation or brought his takings claim against the
28 United States, though he complains specifically of a taking by the government. See Relator’s

1 Supp. Brief at 7 (Brooks submitting that “there are no claims against the United States”);
2 Opp’n at 3 (“Congress ha[s] seen fit to completely destroy RELATOR’s property interest.”).
3 Because a taking is not unconstitutional unless it is uncompensated, Brooks must seek
4 compensation and bring his takings claim against the United States, under either the Tucker
5 Act or the Little Tucker Act, and have it adjudicated on the merits before this Court can
6 acknowledge that an unconstitutional taking has occurred. See Mead v. City of Cotati, C 09-
7 3585 CW, 2008 WL 4963048, at *4 (N.D. Cal. Nov. 19, 2008), aff’d, 389 F. App’x 637 (9th
8 Cir. 2010) (“[T]he Court cannot declare than an unconstitutional taking has occurred . . . until
9 it can determine that Plaintiff was not given just compensation for the taking.”). This Court
10 thus cannot invalidate the retroactive amendments to § 292 under the theory that they operate
11 as an unconstitutional taking by the government until Brooks brings his takings claim against
12 the United States, and it is determined that he has had a property right taken by the
13 government without just compensation.

14 Brooks appears to argue that he cannot avail himself of the Tucker Act, or the Little
15 Tucker Act, because “no amount has been set forth by any party in this action,” and even
16 assuming the amount in dispute had been set forth, the AIA has destroyed his ability to
17 recover “monies received based upon the claims set forth in [his] Complaint,” and thus “there
18 exists no right of recovery of the money lost by Public Law No. 112-29.” See Relator’s
19 Supp. Brief at 7-8. Brooks thereby concludes that it is impossible for him to receive
20 compensation, proving the unconstitutionality of the law. See id. What Brooks fails to
21 recognize, however, is that this is the very reason his takings claim would likely fail, were it
22 to be adjudicated. Brooks cannot determine what his right of recovery would be because he
23 never had one to begin with – he cannot claim a taking of that which he never had.

24 The AIA was enacted before any final judgement had been entered in this action, thus
25 Brooks had not yet actually recovered any of the “bounty” that was available under the
26 former false marking statute. Opp’n at 8. Still Brooks argues that with litigation already
27 underway, he has a property interest in his cause of action, which Congress “destroyed” by
28 retroactively eliminating his standing to sue. See id. at 7-8 (“Congress has sought to

1 retroactively destroy RELATOR’S property interest in his position as RELATOR in the
2 current action.”). While the AIA did eliminate his ability to pursue this action, this alone
3 does not constitute an unconstitutional taking.

4 The Takings Clause protects only vested property rights. Landgraf, 511 U.S. at 266
5 (“The Fifth Amendment’s Takings Clause prevents the Legislature (and other government
6 actors) from depriving private persons of vested property rights except for a ‘public use’ and
7 upon payment of ‘just compensation.’” (emphasis added)). The Ninth Circuit “ha[s] squarely
8 held that although a cause of action is a species of property, a party’s property right in any
9 cause of action does not vest until a final unreviewable judgment is obtained.” Ileto v.
10 Glock, Inc., 565 F.3d 1126, 1141 (9th Cir. 2009) (plaintiffs had no vested property interest in
11 their accrued state-law causes of action against gun manufacturers and did not suffer a taking
12 when the passage of the PLCAA retroactively preempted and eliminated their claims). In the
13 present case, Brooks has not obtained any judgment in his favor, let alone a “final
14 unreviewable judgment,” and thus has no vested property interest in his cause of action. See
15 id. Though Brooks has expended time and money “in pursuit of the bounty” previously
16 available to individuals under § 292, see Opp’n at 3, as Dunlop points out, he “never had the
17 guarantee of a property interest in his lawsuit . . . if for no other reason, because he might
18 lose his case against Dunlop.” See Opp’n at 3; Rep. at 4. Brooks has not established that he
19 ever acquired a constitutionally protected property interest in this litigation.

20 The case law cited by Brooks in his opposition does not alter this conclusion. He
21 mistakenly cites the dissenting opinion in U.S. ex rel. Stevens v. State of Vt. Agency of
22 Natural Res., 162 F.3d 195, 23 (2d Cir. 1998) for the proposition that “*qui tam* relator has a
23 personal stake in a suit once begun, and that this stake is akin to a property right.” See Opp’n
24 at 5-6. Furthermore, this argument was made in a far different context – whether individuals
25 can bring suit against a state as *qui tam* relators under the False Claims Act without violating
26 the Eleventh Amendment. See U.S. ex rel. Stevens, 162 F.3d at 223 (Weinstein, J.,
27 dissenting). Brooks also notes that the Supreme Court, in reviewing the Second Circuit’s
28 decision in U.S. ex rel. Stevens, did recognize that “a *qui tam* relator has a ‘concrete private

1 interest in the outcome of [the] suit,” see Opp’n at 6, but the Court there analogized this
2 interest to that of “someone who has placed a wager upon the outcome.” See Vt. Agency of
3 Natural Res. v. U.S. ex rel Stevens, 529 U.S. 765, 772 (2000). The Court did not nearly go
4 so far as to say that a *qui tam* relator’s interest in the outcome of the action equates to the
5 kind of vested property interest that cannot be taken by the government without just
6 compensation. See id. Brooks fails to conceive of a possible takings claim against the
7 United States, not because of the unconstitutionality of the law, but because the government
8 took no vested property interest from him in eliminating his cause of action.

9 **IV. CONCLUSION**

10 Absent a constitutional violation, the retroactive amendments shall apply as intended.
11 See Landgraf, 511 U.S. at 267-68. Accordingly, at this time, Brooks’s claims against Dunlop
12 must be dismissed because, as discussed above, he lacks standing and can no longer
13 articulate a legally sufficient claim for false patent marking under the AIA. See Pub. L. No.
14 112-29 §§ 16(b)(1)-(4). If Brooks could somehow articulate a property interest that the AIA
15 destroyed,² he might have a valid takings claim, but that claim must be brought against the
16 United States and adjudicated before the validity of the AIA amendments can be questioned.
17 See Preseault v. I.C.C., 494 U.S. at 11. As Brooks has not yet presented a constitutional
18 violation that would void the false marking amendments in the AIA, the amendments must be
19 applied as intended, and Brooks’s claims against Dunlop must be dismissed.

20 For the foregoing reasons, the Court GRANTS Dunlop’s Motion to Lift the Stay and

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24 ²Brooks does argue briefly in his supplemental briefing that he has property “rights in a
25 unilateral contract with the United States” and that “[c]ontract rights have long been recognized as rights
26 protected by the Fifth Amendment’s Takings Clause,” citing Lynch v. United States, 292 U.S. 571, 579
27 (“Valid contracts are property, whether the obligor be a private individual, a municipality, a state, or the
28 United States. Rights against the United States arising out of a contract with it are protected by the Fifth
Amendment.”). See Relator’s Supp. Brief at 8-9. The Court need not reach this argument because even
if Brooks can articulate a taking of property rights arising from a valid contract with the government,
he must bring that claim against the United States and have it determined that he was not given just
compensation before this Court can recognize that an unconstitutional taking has occurred. See Mead,
2008 WL 4963048, at *4.

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Dismiss Brooks's Claims.

IT IS SO ORDERED.

Dated: December 9, 2011



CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE