

# In the United States Court of Federal Claims

No. 11-345C  
(Filed: July 27, 2012)  
**NOT FOR PUBLICATION**

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SARAH EMANUELE, )  
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 Plaintiff, )  
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 v. )  
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 THE UNITED STATES, )  
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 Defendant. )  
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## OPINION AND ORDER DISMISSING CASE

Pending before the court is the government’s motion to dismiss pro se plaintiff Sarah Emanuele’s amended complaint for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) of the Rules of the United States Court of Federal Claims (“RCFC”) and for failure to state a claim upon which relief can be granted pursuant to RCFC 12(b)(6). Also pending is the government’s motion, in the alternative, for summary judgment on some of plaintiff’s claims pursuant to RCFC 56. In her amended complaint, Ms. Emanuele raises several claims in connection with her termination from the Federal Aviation Administration (“FAA”). She also makes several claims for breach of contract in connection with a settlement agreement she had entered into with the FAA before she was terminated. For the reasons that follow, the court finds that the entirety of Ms.

Emanuele's case must be dismissed, in part for lack of subject matter jurisdiction, and in part for failure to state a claim upon which relief can be granted.

## **I. BACKGROUND**

The following facts are taken from Ms. Emanuele's amended complaint and the documents attached to the parties' briefs. In her complaint, Ms. Emanuele seeks over \$100 million in damages based on claims of alleged discrimination and wrongful termination in violation of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. § 2000e-5(f)(3). She also seeks damages sounding in tort for the wrongs allegedly perpetrated against her by certain FAA officials during the period of her employment. She seeks additional damages for the FAA's alleged violations of the Whistleblower Protection Act, 5 U.S.C. § 1213; the Health Information Portability and Accountability Act ("HIPAA"), 42 U.S.C. § 1320d-5; the Family Medical Leave Act ("FMLA"), 29 U.S.C. § 2615; the Hobbs Act, 18 U.S.C. §§ 1951-1960; and various workers compensation guidelines. Finally, she seeks damages in the amount of \$2,450,000 for the alleged breach of a settlement agreement she entered into with the FAA before she was terminated.

Ms. Emanuele began working for the FAA in August 2007. During her employment as a developmental Air Traffic Control Specialist at the Memphis, Tennessee Air Route Traffic Control Center ("ARTCC"), Ms. Emanuele alleges that she experienced sexual harassment, a hostile working environment, and mistreatment at the hands of various FAA supervisors. Am. Compl. ¶¶ 2-3. Ms. Emanuele filed an Equal Employment Opportunity ("EEO") complaint with the Department of Transportation

Departmental Office of Civil Rights (“DOCR”) on July 10, 2009.<sup>1</sup> Ms. Emanuele also claims that, during this period, her FAA supervisors violated HIPAA by accessing her medical information without her consent and committed extortion under the Hobbs Act by offering to transfer her to a new position in exchange for allowing the FAA to indicate in her personnel file that she had been suspended. Am. Compl. ¶¶ 15, 28. She further claims that her supervisors violated the FMLA by sending her harassing paperwork and requiring that she attend meetings while she was on medical leave. Am. Compl. ¶¶ 18, 22.

On August 26, 2010, Ms. Emanuele’s EEO complaint was resolved through a settlement agreement with the FAA. Def.’s Mot. to Dismiss or, in the Alternative, for Summ. J. (“Def.’s Mot.”) Ex. 1 (“Settlement Agreement”); Am. Compl. ¶¶ 30-31. Under the terms of the Settlement Agreement, the FAA agreed to pay Ms. Emanuele \$27,000, transfer her to a new position at the Morristown, New Jersey Air Traffic Control Tower (“ATCT”), and offer her training associated with the new position. See Settlement Agreement ¶¶ 1, 2, and 3.<sup>2</sup> In exchange, Ms. Emanuele promised to

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<sup>1</sup> The government states that this EEO complaint was filed in August 2009. See Def.’s Mot. to Dismiss or, in the Alternative, for Summ. J. (“Def.’s Mot.”) at 3, Ex. 1 (“Settlement Agreement”).

<sup>2</sup> The Agency shall pay to Complainant the lump sum of Twenty-Seven Thousand Dollars and No Cents (\$27,000.00) in full settlement of any and all damages or expenses incurred as a result of this complaint and the resulting settlement agreement. . . . Complainant shall be transferred from her duty station at the Federal Aviation Administration (FAA) Air Traffic Organization’s (ATO) Memphis Air Route Traffic Control Center to Morristown, New Jersey Air Traffic Control Tower (Morristown ATCT). . . . The Agency will, within a reasonable amount of time, offer Complainant terminal operations training at the FAA Academy in Oklahoma City, Oklahoma.

[W]aive any and all actions, claims, complaints, . . . grievances, appeals and proceedings of whatever nature against the Agency, . . . which are now or hereafter may be asserted . . . based on any action taken as of the date of [Ms. Emanuele's] execution of this Agreement, with the exception of any claims that may arise by reason of breach of any terms of this Settlement Agreement.

Settlement Agreement ¶ 6. The Settlement Agreement also provided that “[i]n the event [Ms. Emanuele] believes the Agency has breached or non-performed under this agreement, the provisions of 29 CFR § 1614.504, which set out [Ms. Emanuele's] remedies and the procedures for the same, shall apply.” Settlement Agreement ¶ 12.

The FAA paid Ms. Emanuele \$27,000 by check on September 8, 2010. The FAA also physically transferred Ms. Emanuele to the Morristown, New Jersey tower and assigned her to a tower training course for October 2010. Although Ms. Emanuele reported to the Morristown airport on September 26, 2010, her administrative paperwork did not reflect her change in station until December 5, 2010. The FAA corrected this error to reflect the actual date she arrived at Morristown. Ms. Emanuele also received the additional salary and locality pay as backpay for the duration of her employment in Morristown.

Following her assignment for tower training, Ms. Emanuele reported to the FAA Academy in Oklahoma City, Oklahoma on October 18, 2010.<sup>3</sup> Germane to this action is

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Settlement Agreement ¶¶ 1, 2, and 3.

<sup>3</sup> Ms. Emanuele's primary job function at the Memphis ARTCC was to provide air traffic service to aircraft operating during the “en route” phase of a flight. See Air Traffic Management System, National Aeronautics and Space Administration (NASA), <http://virtualskies.arc.nasa.gov/atm/6.html> (last visited July 10, 2012). During the “en route” phase, controllers guide airplanes flying at high altitudes through large sections of airspace. In contrast, Ms. Emanuele's new position at the Morristown ATCT would have required her to guide aircraft as they take off or land and taxi from or to the gate. See Air Traffic: NextGen

the provision of the Settlement Agreement regarding training. Ms. Emanuele claims that she was to be “offered” training but that she was instead “assigned” to training. It is not disputed that her training start date was changed from October 15, 2010 to October 18, 2010 to accommodate her travel plans.

Ms. Emanuele’s training at the FAA Academy did not go well. While Ms. Emanuele was at the FAA Academy she was reprimanded for engaging in inappropriate conduct, including disrupting class, yelling at her instructor, and refusing to comply with instructions. Ms. Emanuele disputes these contentions but acknowledges that on November 24, 2010, she was removed from further training and never completed the training course.

Following her removal from the training academy, Ms. Emanuele, on November 29, 2010, wrote to the DOCR alleging that the FAA breached the Settlement Agreement by failing to properly transfer her to the Morristown ATCT until December 2010, thereby keeping her under the control of her previous supervisors, and by mandating that she attend a specified training course. Def.’s Mot. at 6; Am. Compl. ¶ 43. On February 11, 2011, the FAA responded to Ms. Emanuele’s complaint. Def.’s Mot. Ex. 7. Regarding Ms. Emanuele’s claims relating to the transfer, the FAA explained that it would correct the transfer paperwork and that she would receive any pay and benefits retroactive to her transfer at the end of September 2010. Def.’s Mot. Ex. 7 (“We have taken action to

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Briefing, FAA, [http://www.faa.gov/air\\_traffic/briefing/](http://www.faa.gov/air_traffic/briefing/) (last visited July 10, 2012). The dramatic differences between the responsibilities of controllers at these two facilities explain why the FAA requires additional training for an employee transferring from one type of facility to another.

change the effective date . . . because the settlement agreement was silent in regard to this specific process; Ms. Emanuele actually reported to Morristown ATCT on [September 27, 2010]; and the change will provide a financial benefit to [Ms. Emanuele].”). With regard to training, the letter included a copy of FAA email correspondence, which explained that the training course was required for employees, like Ms. Emanuele, who were transferring from a radar environment to a tower environment without having previously achieved CPC or “Certified Professional Controller” status. Def.’s Mot. Ex. 7. The letter further stated that no one at Morristown understood that Ms. Emanuele objected to attending this required training. Def.’s Mot. Ex. 7. On February 23, 2011, the DOCR issued a final agency decision concluding that the FAA did not breach the terms of the Settlement Agreement. Def.’s Mot. Ex. 6.

Separate and apart from the above-cited issues, the FAA in Morristown, on February 3, 2010, proposed to suspend Ms. Emanuele for 30 days because of inaccurate statements she had made on her pre-employment medical questionnaire. Ms. Emanuele contested the suspension through the arbitration procedure contained in her union’s collective bargaining agreement with the FAA. The arbitrator upheld the suspension but reduced its length to 25 days. Ms. Emanuele challenged the arbitrator’s decision, which the Federal Circuit upheld in July 2011 in Emanuele v. Dep’t of Transp., 436 F. App’x 988, 990 (Fed. Cir. 2011).

In addition to her suspension, the FAA in Morristown issued a Notice of Proposed Removal seeking to remove Ms. Emanuele on March 3, 2011, based on her behavior at the training academy. Ms. Emanuele was given an opportunity to respond to the notice.

However, Ms. Emanuele did not respond and on April 11, 2011, the FAA removed Ms. Emanuele from federal service. On May 4, 2011, Ms. Emanuele's union filed a grievance concerning her removal. The grievance is still pending. Def.'s Mot. Ex. 10.

Before Ms. Emanuele was terminated, she applied for disability retirement from the FAA on March 1, 2011, citing major depression with recurrent and post-traumatic stress disorder. The Office of Personnel Management approved her request for disability retirement on December 1, 2011. As a result, Ms. Emanuele is now receiving an annuity payment from the federal government.

## **II. DISCUSSION**

### **A. Motion to Dismiss for Lack of Subject Matter Jurisdiction Under RCFC 12(b)(1)**

#### **1. Standard of Review**

A court must first satisfy itself that it has jurisdiction before it may proceed to the merits of a case. Hardie v. United States, 367 F.3d 1288, 1290 (Fed. Cir. 2004) (quoting PIN/NIP, Inc. v. Platte Chem. Co., 304 F.3d 1235, 1241 (Fed. Cir. 2002)). In addressing a motion to dismiss for lack of subject matter jurisdiction, the court will “consider the facts alleged in the complaint to be true and correct.” Reynolds v. Army & Air Force Exch. Serv., 846 F.2d 746, 747 (Fed. Cir. 1988); Henke v. United States, 60 F.3d 795, 797 (Fed. Cir. 1995). In addition, the court may consider materials outside of the pleadings to determine whether it has subject matter jurisdiction over a claim or must dismiss it pursuant to RCFC 12(b)(1). Aviation Software, Inc. v. United States, 101 Fed. Cl. 656, 661 (2011) (citing Rocovich v. United States, 933 F.2d 991, 993 (Fed. Cir.

1991)). Ultimately, the plaintiff has the burden of establishing jurisdiction. Reynolds, 846 F.2d at 748.<sup>4</sup>

In order to establish jurisdiction in this court, Ms. Emanuele must demonstrate that her claims for money damages against the United States are “founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States . . . [and do not sound] in tort.” 28 U.S.C. § 1491(a)(1). She must also show that her claims do not fall within the exclusive jurisdiction of another federal court. Wilson v. United States, 405 F.3d 1002, 1009 (Fed. Cir. 2005). If the court does not have jurisdiction over a claim, it must transfer it to any other such court in which the action could have been brought at the time it was filed, if a transfer is in the “interest of justice.” Texas Peanut Farmers v. United States, 409 F.3d 1370, 1374 (Fed. Cir. 2005).

In keeping with these standards, the court will first consider the government’s motion to dismiss for lack of jurisdiction over Ms. Emanuele’s non-contract claims. The court will then turn to Ms. Emanuele’s claims for breach of the Settlement Agreement.

## **2. The Court Lacks Jurisdiction Over Ms. Emanuele’s Non-Contract Claims**

### **a. The Court Must Dismiss Ms. Emanuele’s Claims Under Title VII, for Wrongful Termination, and for Alleged Violations of the Whistleblower Protection Act.**

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<sup>4</sup> Although the submissions of pro se litigants like Ms. Emanuele are traditionally held to “less stringent standards than formal pleadings drafted by lawyers,” Estelle v. Gamble, 429 U.S. 97, 106 (1976), “[t]his latitude . . . does not relieve a pro se plaintiff from meeting jurisdictional requirements.” Bernard v. United States, 59 Fed. Cl. 497, 499, aff’d 98 F. App’x 860 (Fed. Cir. 2004).

The Tucker Act's grant of jurisdiction does not extend to claims based on violations of Title VII. Jurisdiction over Title VII claims rests exclusively in the federal district courts. Taylor v. United States, 310 F. App'x 390, 392-93 (Fed. Cir. 2009) (citing Brown v. Gen. Servs. Admin., 425 U.S. 820, 829 (1976)); 42 U.S.C. § 2000e-5(f)(3). Because a "specific and comprehensive scheme for administrative and judicial review [of Title VII claims] is provided by Congress, the Court of Federal Claims' Tucker Act jurisdiction over the subject matter covered by the scheme is preempted." Wilson v. United States, 405 F.3d 1002, 1009 (Fed. Cir. 2005) (quoting Vereda, Ltda. v. United States, 271 F.3d 1367, 1375 (Fed. Cir. 2001)). Accordingly, this court cannot hear Ms. Emanuele's claims for harassment, discrimination, or retaliation based on Title VII. Ms. Emanuele's Title VII claims must be dismissed.

In addition, the court must dismiss Ms. Emanuele's wrongful termination claims because this court does not have jurisdiction over any claim to recover damages or to secure equitable relief for adverse personnel actions against employees of the federal government, such as wrongful termination or forced retirement. See Hall v. United States, 617 F.3d 1313, 1316 (Fed. Cir. 2010) (citing United States v. Fausto, 484 U.S. 439, 449 (1988)); see also Worthington v. United States, 168 F.3d 24, 26-27 (Fed. Cir. 1999). Instead, federal employees challenging adverse personnel actions must bring a claim under the Civil Service Reform Act ("CSRA") and are subject to the jurisdiction of the Merit Systems Protection Board ("MSPB"). Price v. Panetta, 674 F.3d 1335, 1339 (Fed. Cir. 2012). The CSRA precludes this court from exercising jurisdiction over such personnel claims. Berry v. United States, 86 Fed. Cl. 750, 756 (2009) (quoting Gallo v.

United States, 529 F.3d 1345, 1352 (Fed. Cir. 2008)). Accordingly, Ms. Emanuele’s claims for wrongful termination must be dismissed for lack of jurisdiction.

Finally, Ms. Emanuele’s claims based on alleged violations of the Whistleblower Protection Act must be dismissed on the same grounds as her claims for wrongful termination. Ms. Emanuele’s exclusive remedy for the redress of improper actions under the Whistleblower Protection Act is set by the CSRA, which precludes this court from exercising jurisdiction over Whistle Blower Act claims. See Fausto, 484 U.S. at 446; Ho v. United States, 49 Fed. Cl. 96, 106 (2001).

**b. The Court Does Not Have Jurisdiction Over Ms. Emanuele’s Claims for Libel, for Civil Wrongs Committed by Agents of the United States, or for Criminal Violations of the Hobbs Act.**

The limited jurisdiction of the Tucker Act prevents this court from adjudicating Ms. Emanuele’s claims for libel because these claims sound in tort. See 28 U.S.C. § 1491(a)(1) (granting the Court of Federal Claims jurisdiction to hear claims “founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States . . . in cases not sounding in tort.”). Thus, this court does not have jurisdiction over claims of libel by federal employees. Matthews v. United States, 72 Fed. Cl. 274, 279 (2006).

This court also lacks jurisdiction over claims seeking damages for civil wrongs allegedly committed by agents of the government or for any alleged violations of the criminal code. See Brown v. United States, 105 F.3d 621, 624 (Fed. Cir. 1997); Shearin v. United States, 992 F.2d 1195, 1197 (Fed. Cir. 1993); Joshua v. United States, 17 F.3d

378, 379-80 (Fed. Cir. 1994). As such, Ms. Emanuele's claims based on libel and for other civil and criminal wrongs by FAA employees must be dismissed.

**c. The Court Must Dismiss Ms. Emanuele's Claims Based on Alleged Violations of HIPAA and Workers Compensation Guidelines**

This court does not have jurisdiction over Ms. Emanuele's HIPAA claims.

HIPAA does not create a private right of action. Agee v. United States, 72 Fed. Cl. 284, 289-90 (2006). As HIPAA claims are not money-mandating, this court does not have jurisdiction to resolve these issues. See Fisher v. United States, 402 F.3d 1167, 1172 (Fed. Cir. 2005). Finally, Ms. Emanuele's workers compensation claims must be dismissed because federal courts may not review decisions of the Secretary of Labor adjudicating violations of workers compensation regulations. See Lindahl v. Office of Personnel Mgmt., 470 U.S. 768, 799-80 (1985) (finding that the workers compensation statute codified at 5 U.S.C. § 8128 contains "unambiguous and comprehensive" language intended to bar judicial review altogether).<sup>5</sup>

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<sup>5</sup> Ms. Emanuele also appears to allege that the FAA violated the FMLA by sending her harassing paperwork and demanding that she attend a meeting during a time when she was on leave. Even taking the allegations in the complaint to be true, the court's review of Ms. Emanuele's complaint reveals that each of the FMLA violations alleged by Ms. Emanuele took place prior to execution of the Settlement Agreement. See Am. Compl. ¶¶ 18, 22. To the extent that Ms. Emanuele's complaint can be considered to state a money-mandating claim under the FMLA, the court finds, under the terms of the Settlement Agreement, that she pledged to "waive any and all actions . . . based on any action taken as of the date of [Ms. Emanuele's] execution of this Agreement." Settlement Agreement ¶ 6. Accordingly, the court may not adjudicate her FMLA claims, because they were waived by the terms of the Settlement Agreement. See Esch v. United States, 49 Fed. Cl. 631, 634 aff'd, 25 F. App'x 942 (Fed. Cir. 2001).

### **3. The Court Has Jurisdiction Over Ms. Emanuele's Claims for Breach of the Settlement Agreement**

Having dismissed all of Ms. Emanuele's non-contract claims, the court now turns to her claims for breach of the Settlement Agreement.

The Federal Circuit in Holmes v. United States, 657 F.3d 1303 (Fed. Cir. 2011), recently concluded that the Court of Federal Claims may exercise jurisdiction over claims for breach of Title VII settlements to the extent the agreements can be fairly interpreted as contemplating money damages for breach. Id. at 1315-16. The government argues that Ms. Emanuele's claims for breach of the Settlement Agreement must be dismissed because the provisions Ms. Emanuele identifies do not contemplate money damages for breach. For the reasons discussed below, the court disagrees with the government and concludes that the Settlement Agreement provisions requiring her transfer and for her training could give rise to money damages if breached under the standard identified in Holmes.

In Holmes, the Federal Circuit held that if settlement "agreements inherently relate to monetary compensation through relationship to . . . future employment," money damages may be available. 657 F.3d at 1316. The court finds that the provisions regarding Ms. Emanuele's transfer and training do relate to her employment and compensation. The transfer allowed Ms. Emanuele to take on a new set of responsibilities with higher pay and benefits. The training was required by the FAA so that she could perform her new work. In both instances, had the FAA failed to comply with those provisions, then Ms. Emanuele would have been financially harmed. In such

circumstances, a breach of the subject provisions by the FAA could give rise to a claim for compensation. Accordingly, the court finds under the standards set by the Federal Circuit in Holmes that this court has jurisdiction over Ms. Emanuele's claims for breach of the Settlement Agreement.

**B. Motion to Dismiss Ms. Emanuele's Claims for Breach of the Settlement Agreement Under RCFC 12(b)(6)**

The government argues that even if this court has jurisdiction over Ms. Emanuele's claims for breach of the Settlement Agreement, the court must nonetheless dismiss these claims for failure to state a claim upon which relief can be granted under RCFC 12(b)(6). When deciding such a motion, the court must accept as true all well-pleaded allegations in the complaint and draw all reasonable inferences in favor of the plaintiff. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). The plaintiff need only plead enough facts to state a claim that is "plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). The court need not, however, "accept as true legal conclusions or unwarranted factual inferences." In re Bill of Lading Transmission and Processing Sys. Patent Litig., 681 F.3d 1323, 1331 (Fed. Cir. 2012) (citation omitted).

In her complaint, Ms. Emanuele claims that the FAA breached the agreement because the FAA delayed the effective date of her transfer from Memphis to Morristown and because she "received a mandatory class date to go to the [FAA Academy]." Am. Compl. ¶¶ 33, 38. The government argues that Ms. Emanuele has not stated a claim for breach of the Settlement Agreement regarding the transfer, because the FAA corrected her transfer effective date and paid her all pay adjustments for the period during which

her paperwork was pending. Ms. Emanuele does not deny that the FAA completed the transfer in September 2010 or that she has received all of the pay and benefits to which she is entitled. In such circumstances, the government has complied with the terms of the agreement and there is no basis for finding a breach of the Settlement Agreement. See Lindsay v. United States, 295 F.3d 1252, 1257 (Fed. Cir. 2002) (determining that a motion to dismiss for failure to state a claim upon which relief can be granted is appropriate where the facts asserted by the complainant do not entitle her to a legal remedy). Accordingly, Ms. Emanuele has failed to state a claim for breach of contract based on the transfer provision of the Settlement Agreement and that portion of her complaint must be dismissed pursuant to RCFC 12(b)(6).

The government also contends that Ms. Emanuele has failed to state a breach of contract claim in connection with the training requirement set forth in the Settlement Agreement. The government argues that Ms. Emanuele cannot state a claim for breach of contract based on the government's decision to "assign" rather than "offer" her training at the FAA Academy. The government explains that Ms. Emanuele was provided with the training identified in the Settlement Agreement and attended the training. Ms. Emanuele admits in her complaint that her training start date was "changed" to accommodate her travel schedule. She does not allege that she asked for any other timing change prior to reporting to the FAA Academy. The government argues based on the facts alleged in her complaint that the FAA fulfilled its obligations under the Settlement Agreement by

providing her with the opportunity to train for her new job.<sup>6</sup> The government contends that the problems Ms. Emanuele encountered at the training academy involve issues that are separate from the government's obligations under the Settlement Agreement.

The court agrees with the government and concludes that the government met its obligations under the Settlement Agreement when Ms. Emanuele was assigned to the FAA Academy and began taking the training class. The FAA fulfilled its obligation under the agreement by providing her with the opportunity to train. The fact that the training was "assigned" rather than offered does not give rise to a claim for breach. The FAA gave Ms. Emanuele the training opportunity she was promised under the Settlement Agreement and she availed herself of that opportunity by attending the Academy. Ms. Emanuele's problems at the FAA Academy raise issues that are separate from the Settlement Agreement itself and do not give rise to any claim for breach of the Settlement Agreement. Accordingly, Ms. Emanuele has failed to state a claim for breach of contract based on the training provision of the Settlement Agreement and that portion of her complaint must be dismissed pursuant to RCFC 12(b)(6).

Because each of Ms. Emanuele's claims must be dismissed pursuant to RCFC 12(b)(1) or RCFC 12(b)(6), the court does not reach the government's argument in the alternative that it is entitled to summary judgment on Ms. Emanuele's claims for breach of the Settlement Agreement under RCFC 56.

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<sup>6</sup> Ms. Emanuele disputes that she needed any additional training for her new job at Morristown. However, as discussed above, the FAA's manuals make plain that she required more training in order to take on certain of the work she was to perform in her new duties at Morristown.

### III. CONCLUSION

For the aforementioned reasons, Ms. Emanuele's entire amended complaint is hereby **DISMISSED IN PART** under RCFC 12(b)(1) and **DISMISSED IN PART** under RCFC 12(b)(6). The Clerk is directed to enter judgment accordingly. Each party to bear its own costs.<sup>7</sup>

**IT IS SO ORDERED.**

s/Nancy B. Firestone  
NANCY B. FIRESTONE  
Judge

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<sup>7</sup> Ms. Emanuele asks in her pleadings for the court to transfer her non-contract claims to another court to the extent the court concludes that it does not have jurisdiction over those claims. The court has the authority to transfer claims under 28 U.S.C. § 1631, which states that a transfer is appropriate if “(1) the transferor court lacks jurisdiction; (2) the action could have been brought in the transferee court at the time it was filed; and (3) transfer is in the interest of justice.” Zoltek Corp. v. United States, 672 F.3d 1309, 1314 (Fed. Cir. 2012).

While it is true that the court has determined that it lacks jurisdiction over Ms. Emanuele's non-contract claims, most of Ms. Emanuele's claims cannot be heard in federal district court and therefore transfer is not appropriate. As the government argues, her libel claims fall outside the waiver of sovereign immunity established under the Federal Tort Claims Act and many of her statutory claims involve statutes that do not provide for a private right of action, such as HIPAA, workers compensation laws, and the Hobbs Act. Further, she has failed to allege exhaustion of her remedies under other statutes such as the Whistleblower Protection Act and Title VII. In fact, Ms. Emanuele's principle claim for \$100 million dollars stemming from her alleged wrongful termination is still in arbitration under the procedures she elected to follow under the CSRA. Finally, Ms. Emanuele is precluded from bringing her pre-settlement FMLA claims under the terms of the waiver in the Settlement Agreement. It is for these reasons that the court declines to transfer Ms. Emanuele's non-contract claims.