

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

KEVIN R. RYAN,)	
)	
Plaintiff,)	
)	
v.)	Cause No. 1:06-cv-1770-JDT-TAB
)	Judge John D. Tinder
)	Magistrate Judge Tim A. Baker
)	
UNDERWRITERS LABORATORIES, INC.)	
)	
Defendant.)	

SECOND AMENDED COMPLAINT

Now comes Plaintiff Kevin R. Ryan, by the undersigned counsel, and for his Second Amended Complaint for wrongful discharge against Defendant corporation Underwriters Laboratories, Inc. states and alleges as follows:

I. JURISDICTION

1. The District Court has subject matter jurisdiction over this case, which was removed by Defendant from the Monroe Circuit Court, Monroe County, Indiana, pursuant to diversity jurisdiction, 28 U.S.C. sec. 1332, and the federal removal statutes. The District Court also has jurisdiction over this Second Amended Complaint pursuant to the federal False Claims Act, 31 U.S.C. § 3730(h).

2. The Monroe Circuit Court had jurisdiction over this civil tort action pursuant to I.C. 33-28-1-2.

II. PARTIES

A. PLAINTIFF

3. Plaintiff Kevin R. Ryan is currently a resident of Monroe County, Indiana.

4. Mr. Ryan is a chemist who was hired by Environmental Health Laboratories, Inc. (EHL) in South Bend Indiana which lab was subsequently acquired by Defendant Underwriters Laboratories, Inc. (UL). Mr. Ryan was an employee of UL at the time his employment was involuntarily terminated on November 16, 2004.

5. Mr. Ryan had good performance and favorable performance evaluations while employed with EHL and EHL/UL. Mr. Ryan received promotions while an employee at EHL/UL, including a promotion to Laboratory Manager, the highest position at the South Bend facility.

6. On November 16, 2004, UL terminated Mr. Ryan's employment.

7. The letter of termination provided to Mr. Ryan from UL stated that UL was terminating his employment because of a letter Mr. Ryan had written to a federal government agency, the National Institute of Standards and Technology (NIST), concerning the collapse of the World Trade Center Twin Towers and Building 7 following the September 11, 2001 attacks.

B. DEFENDANT

8. Defendant Underwriters Laboratories, Inc. is a not-for-profit corporation with headquarters in Northbrook, Illinois.

9. UL has offices and conducts business world wide. UL has been engaged in business for more than a century.

10. UL is in the business of performing product safety testing and certification related to consumer products and construction materials.

11. UL has done and continues to do substantial work under contract with the

United States government.

12. UL has done contract work for the NIST relating to the WTC building collapses.

13. Some of this UL contract work for NIST was performed during and just prior to the period of time in 2003 and 2004 when Mr. Ryan raised concerns and questions in writing internally with UL managers related to UL's prior fire resistance testing of steel components used in the construction of the WTC buildings, when Mr. Ryan obtained information from UL officials confirming that UL had in the past performed such fire resistance testing of steel components used in the construction of the WTC buildings, and when Mr. Ryan raised questions and concerns regarding the inadequacies in the government's investigation of the three WTC building collapses following two airplanes striking two of these three WTC buildings during the September 11, 2001 terrorist attacks, and related issues of potential dangers to the public, potential crimes, government misconduct, and potential waste of government funds in performing certain studies.

14. Some of this UL contract work for NIST was performed during the period of time in 2004 when Mr. Ryan reported certain material facts to and raised concerns and questions in writing externally with NIST. Mr. Ryan reported in writing to NIST during November of 2004 the material fact that UL had in the past conducted fire resistance testing of steel components used in the construction of the WTC buildings, a fact that Mr. Ryan had obtained from his inquiries with UL officials including the CEO. Mr. Ryan in his November, 2004 letter to NIST also raised questions and concerns regarding the inadequacies in the government's investigation of the three WTC building collapses following two airplanes striking two of these three WTC buildings during the September 11, 2001 terrorist attacks, and related issues of potential dangers to the public, potential crimes, government misconduct, and potential waste of government funds in performing certain studies.

15. UL acquired Environmental Health Laboratories, Inc. in South Bend, Indiana and now operates this laboratory as the UL Drinking Water Laboratory. UL has a division office in Northbrook, Illinois, in addition to its headquarters.

16. UL was the employer of Plaintiff Kevin Ryan from the time UL acquired EHL until UL terminated Mr. Ryan's employment on November 16, 2004.

III. COUNTS

COUNT 1: RETALIATORY DISCHARGE IN VIOLATION OF THE FEDERAL FALSE CLAIMS ACT WHISTLEBLOWER PROTECTION PROVISION, 31 U.S.C. § 3730(h)

17. The preceding paragraphs and fact allegations are incorporated herein by reference.

18. Following the tragic events of September 11, 2001, and after a period of study and reflection, on November 19, 2003 and in follow-up on December 2, 2003, Mr. Ryan communicated in writing directly with the CEO and other UL officials. Mr. Ryan reported that based on his information he believed that UL had in the past conducted fire resistance testing on the steel components used to construct the WTC towers.

19. Mr. Ryan in these internal communications with UL officials also noted that UL was working under contract with a federal agency, NIST, to perform testing of WTC floor assemblies and/or models thereof as part of NIST's investigation of the causes of the collapse of the WTC towers and WTC Building 7.

20. The fact that UL had performed fire resistance certification testing for the steel components used in the construction of the WTC towers and buildings created an organizational conflict of interest for UL in performing contract work for NIST as part of NIST's investigation of the causes of the collapse of the WTC buildings. If UL had been negligent in its prior testing, or had engaged in fraud during that prior testing, UL would have a clear motive to skew its tests and findings for NIST away from any direction that

might point to its own fault or liability in the collapse of the WTC towers which caused the death of thousands of people.

21. Even if UL had not been negligent or engaged in fraud or misconduct during the prior tests on the steel components used to construct the WTC towers and buildings, an appearance of a conflict of interest would remain as a result of the circumstance of UL, the same company that had certified the fire resistance of the steel components used in constructing the WTC towers and buildings, being involved as a principal WTC collapse investigator and in control of fire resistance testing of the WTC floor assemblies after the fire and collapse of the buildings made with steel components UL had certified as sufficiently fire resistant.

22. This dual role of UL, if it were widely perceived by the public, would destroy public confidence in the integrity of the government's contracting process and in its investigation of the collapse of the WTC towers and buildings.

23. Mr. Ryan's specific statements in these internal communications with UL officials included the following specifics:

a) UL's had a role historically in testing and certifying the steel components used to construct the WTC, and based on the information available to Mr. Ryan, UL had certified the steel as capable of withstanding temperatures from hotter and longer lasting fires than those experienced on September 11, 2001, which raised the serious, and yet to be convincingly answered question as to why three WTC buildings collapsed on September 11, 2001;

b) The official government explanation of the WTC building collapses was flawed, i.e. the government's explanation that the impact of the aircraft and the fires from the jet fuel caused the unprecedented collapse of the steel framed WTC Twin Towers and WTC Building 7 was not supported by a scientific analysis of the evidence;

c) Substantial evidence supported the conclusion that the three WTC buildings

that collapsed did so due to a well-engineered controlled implosion resulting from the use of explosive devices placed in the buildings, evidence including the videotaped uniform controlled nature of the collapses of these three WTC buildings into their own footprints at near free fall speeds, and eyewitness accounts, including accounts of firefighters, of bomb-like explosions in the WTC buildings occurring during the time people in the buildings were trying to escape following the aircraft strikes;

d) A scientific analysis of the remains of the collapsed WTC buildings steel would almost certainly provide a definitive answer to the question of which of these two competing explanations for the WTC buildings collapses – the official story that the jet fuel fires softened the steel or otherwise caused the steel to fail versus the alternative explanation that a controlled implosion resulting from use of explosive devices occurred – was the truth;

e) The steel beams from the collapsed WTC buildings had been immediately removed from the WTC site and shipped for recycling before investigators could examine them, constituting, in the opinion of experienced fire investigators and Mr. Ryan, the improper destruction and removal of evidence; and

f) UL needed to act on this information at a minimum to protect its reputation in regard to the worst safety-related disaster in the history of the United States, but also to prevent future deaths.

24. The CEO of UL wrote back to Mr. Ryan, as did one or more other UL officials. The CEO of UL, Loring Knoblauch, represented in writing to Mr. Ryan that UL had in fact conducted fire resistance testing of the steel components that were intended to be used to construct the WTC towers, and that the tests showed that the WTC steel components (which included applied fireproofing material) passed the tests ("performed beautifully").

25. The UL CEO's response to Mr. Ryan also included several key assertions of

fact regarding the collapse of the three WTC buildings on September 11, 2001 WTC attacks which were erroneous, including:

- a) That extremely high temperatures were reached almost immediately after the aircraft strikes;
- b) These extremely high temperatures were sustained for a very long time;
- c) The steel in the three WTC buildings that collapsed “stood longer than expected;”
- d) A “cascading effect” (a.k.a. a pancake collapse) was involved in the collapse of these WTC buildings;
- e) The WTC towers were designed to withstand the impact of a 707 jet hitting the building but at the same time were not designed to withstand the fire caused by the jet fuel carried by a 707 jet; and
- f) A 707 jet impacting the buildings was reasonably foreseeable but the fire resulting from the jet fuel carried by the same 707 jet was not reasonably foreseeable.

26. Between December 2, 2003 and November 11, 2004, UL took no actions to address the substantial concerns Mr. Ryan had raised.

27. On November 11, 2004, Mr. Ryan communicated in writing directly with the NIST. Mr. Ryan reported to NIST in the second paragraph of his letter (the first substantive paragraph) both a) that UL had in the past conducted fire resistance testing on the steel components used to construct the WTC towers, and b) that UL was working under contract with the NIST to perform testing of WTC floor assemblies and/or models thereof as part of NIST's investigation of the causes of the collapse of the WTC buildings. Given that both of these statements were in the first substantive paragraph of Mr. Ryan's letter to NIST, it would have been difficult for NIST to have missed the obvious implication (even if Mr. Ryan had yet to grasp it himself) – NIST had hired a contractor to investigate and perform fire resistance tests regarding the collapse of the WTC

buildings, a collapse government officials believed to be fire related, even though that same company, UL, had been involved in fire resistance certification testing for materials used to construct that same building. The conflict of interest, and at minimum the appearance of a conflict of interest, in this situation was (or should have been) self-evident.

28. The conflict of interest and appearance of a conflict of interest inherent in this situation where UL was performing fire resistance testing for the government for an investigation of the collapse of buildings regarding which UL had also done fire resistance testing of the components used to construct those same buildings is such that it would have provided the NIST contracting officer sufficient grounds for rescinding, voiding, cancelling or declaring unenforceable NIST's contract with UL for the testing of the WTC floor models (and any other contracts between NIST that had been awarded).

29. This conflict and appearance of a conflict of interest would have also been sufficient to have given NIST and its contracting officer cause to abandon any plans for additional contracts with UL regarding the WTC investigation.

30. Under federal law, NIST had an obligation to disclose any organizational or other conflicts of interest to NIST as soon as it became aware of them either during the contract bidding and negotiation process or after the contract was awarded.

31. The Federal Acquisition Regulations (FAR), 48 C.F.R. § 2.101, provides that an "organizational conflict of interest" means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

32. This UL organizational conflict of interest and appearance of a conflict made UL ineligible and disqualified for any contracts involving the investigation of the collapse

of the WTC buildings because given UL's prior involvement in fire testing of the materials used to construct the WTC buildings, UL could not be objective and unbiased in investigating the causes of the collapse of the WTC buildings for the government because the evidence discovered in the investigation might point to some flaw in the fire resistance of the materials used to construct the WTC or the fire resistance testing of same. Such a finding would have serious repercussions for UL regarding its reputation and potential liability. Such an outcome could be devastating for a company such as UL's that makes its living by doing safety related testing.

33. Upon terminating Mr. Ryan's employment, UL officials made public statements denying that UL had tested the steel components, contradicting what UL's CEO told Mr. Ryan in writing (a document Mr. Ryan has retained), and contradicting information Mr. Ryan had acquired independent of his communications with UL's CEO.

34. From these circumstances, Mr. Ryan has concluded that UL did not fully disclose to UL its past involvement in fire resistance testing of the steel components used to construct the WTC buildings, resulting in UL obtaining the federal contract with NIST to perform the fire testing of the WTC floor assemblies when UL knew or should have known that UL was ineligible for this contract and disqualified from receiving such a contract due to UL's organizational conflict of interest, or at a minimum the NIST contracting officer was unaware of this conflict or improperly chose to ignore it. Under either set of facts, Mr. Ryan's letter made it difficult if not impossible for neither UL or any knowing NIST officials to continue to ignore the fact that UL should not have been awarded the contract by NIST and that UL had potential liability under the False Claims Act for obtaining that contract under false pretenses and submitting false claims to the United States in requesting payments under that contract.

35. UL terminated Mr. Ryan's employment five days after his letter to NIST, on November 16, 2004. In UL's termination notice letter to Mr. Ryan UL stated both that it

was "highly inappropriate" for Mr. Ryan to "comment on tests conducted by UL for its client NIST." In this same letter UL further states that Mr. Ryan's letter "caused harm to both the reputation of the Company and our relationship with NIST."

36. The specific statements Mr. Ryan made in his November 11, 2004 letter to NIST included the following specifics:

a) The investigative and scientific work performed by the government and government contractors concerning the September 11, 2001 collapse of the WTC Twin Towers and WTC Building 7 following the crash of two aircraft into the WTC twin towers was inadequate;

b) Significant flaws exist in the official explanation of these WTC building collapses offered by government officials and government contractors, including the public explanations offered by NIST and its contractors for the WTC building collapses;

c) UL had tested and certified the steel components used to construct the WTC towers;

d) One or more safety related failures may have caused the majority of fatalities in this tragic September 11, 2001 event, including the possibility that the WTC steel unexpectedly failed at temperatures of approximately 250 degrees C., a fact that should be of great concern to the company that certified the fire-proofed steel components, UL;

e) A scientific analysis of the evidence does not support the conclusion that the WTC building fires or fires from the jet fuel can explain the collapse of the three WTC buildings, a fact which should be of great concern to all Americans (because of the implications for what really did cause these WTC buildings to collapse);

f) The summary of the NIST investigation report regarding the WTC steel and temperatures to which it was exposed prepared by NIST officials and government contractors is inconsistent with the findings in the body of the NIST investigation report itself;

g) The work of the NIST and its contractors in investigating the collapse of the WTC buildings is critical to the safety and security of the nation and the world because it is the crux of the crux of the crux – i.e. because the NIST investigation could disclose facts material to understanding what really happened in the WTC building collapses, which in turn could shed critical light on the true nature of the events of September 11, 2001, which events in turn are the driving force behind the “War on Terror;” and a failure of the NIST to identify the truth of what really happened will have serious consequences for the nation, and for global peace and justice; and

h) A number of current and former government employees have risked a great deal to help the nation know the truth of what happened on September 11, 2001, and Mr. Ryan has copied one such person on his letter to NIST in support of that effort.

37. On the same day he wrote the letter, Mr. Ryan made his November 11, 2004 letter to NIST available to a citizen’s organization that was investigating the events of September 11, 2001, including the possibility that the collapse of three WTC buildings may have been due to the intentional use of explosives placed within those buildings by criminal elements within the United States government. Mr. Ryan was not informed by anyone that his letter would be published to the internet until after that publication had occurred.

38. On the same day, November 11, 2004, the citizen’s organization posted Mr. Ryan’s letter on the internet.

39. Upon learning that his letter had been posted on the internet, Mr. Ryan made UL officials aware of the November 11, 2004 letter he wrote to NIST, and that it was posted on the internet. Mr. Ryan asked the organization that had posted the letter on the internet to have a disclaimer posted with his letter noting that he was speaking for himself and not for UL in the letter. The disclaimer was posted with his letter on the internet.

40. Upon learning of the letter and its posting on the internet, UL officials

inquired with Mr. Ryan as to whether, if they requested or Mr. Ryan requested, the citizens organization would remove Mr. Ryan's letter of November 11, 2004 from the internet site on which it was posted. UL never requested Mr. Ryan to make any public clarifications or disclaimers regarding his November 11, 2004 letter to NIST to make more clear that he was speaking for himself and not for UL.

41. After UL had terminated Mr. Ryan's employment, one or more of UL's spokespersons made statements to the press denying that UL had ever certified materials used in the WTC.

42. After UL had terminated Mr. Ryan's employment, one or more of UL's spokespersons made statements quoted in the press to the effect that "there is no evidence" that any firm, including UL, tested the materials used to build the WTC towers.

43. After UL had terminated Mr. Ryan's employment, one or more of UL's spokespersons made statements quoted in the press that UL does not certify structural steel, such as the beams, columns and trusses used in the WTC.

44. After UL had terminated Mr. Ryan's employment, one or more of UL's spokespersons made statements to the press stating that Mr. Ryan's argument regarding the WTC building collapses was "spurious" and "just wrong."

45. UL has asserted that Mr. Ryan made "outrageous comments" regarding "his conspiracy theories" about the WTC building collapses and the terrorist attacks of September 11, 2001. UL also asserted that Mr. Ryan "created the impression" that "those outrageous comments" were "the opinions of his employer, UL."

46. UL has asserted that Plaintiff "made statements to UL's Chief Executive Officer" that the three World Trade Center (WTC) towers in New York City "had been intentionally blown up by explosive devices placed inside the buildings." UL has asserted that on November 19, 2003 and again on December 2, 2003, Plaintiff made various "unsubstantiated" statements to UL's Chief Executive Officer regarding the

terrorist attacks of September 11, 2001.

47. UL has asserted that Mr. Ryan “used his UL e-mail account to send” a letter containing “further bizarre and baseless assertions” about the events of September 11, 2001. UL has asserted that Mr. Ryan’s letter “clearly created the impression that the outrageous opinions contained therein were those of the company.”

48. UL has asserted that Mr. Ryan’s letter “implied that the collapse was actually the result of something more sinister,” a belief he made clear by sending the letter to “a group claiming that the United States government itself had intentionally plotted to destroy the WTC buildings, killing thousands of Americans in the process.” UL has asserted that this November 11, 2004 letter to NIST contained “many false or unsubstantiated assertions” by Mr. Ryan, including that UL had tested and certified the steel used in the WTC towers, and that a scientific analysis of the evidence proved that the buildings had not collapsed from the jet fuel that burned following the impact of the hijacked airplanes. UL has asserted that on November 11, 2004, Mr. Ryan sent a copy of his letter containing “all of his baseless assertions” to an organization that believed the 2001 collapse of the WTC towers may have been caused by the intentional use of explosives placed within those buildings by criminal elements within the United States government.

49. Mr. Ryan was discharged by UL from his position as Laboratory Manager at EHL/UL on November 16, 2004, five days after Mr. Ryan wrote his letter to the NIST raising the specific concerns stated above regarding UL's past testing of WTC steel components and UL's current involvement in the investigation by the government and government contractors of the September 11, 2001 collapse of three buildings at the World Trade Center (WTC) following the crash of two aircraft into the WTC twin towers, and potential causes of those building collapses.

50. In the termination letter UL provided to Mr. Ryan, UL states clearly that Mr.

Ryan's November 11, 2004 letter to NIST was the reason UL fired Mr. Ryan.

51. In the termination letter UL provided to Mr. Ryan, UL makes clear reference to the alleged fact that Mr. Ryan's November 11, 2004 letter to NIST was circulated by Mr. Ryan and was posted on the internet. Posting the letter on the internet would of course significantly increase the probability that, even if the NIST contracting officer had decided to sweep UL's conflict under the rug, some other government official who was unaware of UL's organizational conflict of interest would discover it and demand that UL be disqualified from the NIST contract(s) and possibly initiate a prosecution of UL for violation of the federal False Claims Act.

52. UL's assertion, in the termination letter UL provided to Mr. Ryan, that UL terminated Mr. Ryan's employment because Mr. Ryan in his November 11, 2004 letter to NIST misrepresented that Mr. Ryan was stating UL's opinions rather than his own was a pretext for the illegal firing of Mr. Ryan in retaliation for Mr. Ryan investigating and disclosing facts that would form a reasonable basis for a Qui Tam action against UL under the federal False Claims Act, 31 U.S.C. § 3729 et seq.

53. When Mr. Ryan made inquiries with UL regarding UL's past involvement in fire resistance testing of steel components used to construct the WTC towers, and regarding UL's more recent involvement in performing contract work for NIST involving fire resistance testing of WTC floor assemblies as part of the NIST post-WTC-collapse investigation, Mr. Ryan was engaging in activities protected under 31 U.S.C. § 3730(h).

54. When Mr. Ryan reported to NIST simultaneously in the same paragraph of the same letter regarding UL's past involvement in fire resistance testing of steel components used to construct the WTC towers as well as UL's more recent involvement in performing contract work for NIST involving fire resistance testing of WTC floor assemblies as part of the NIST post-WTC-collapse investigation, Mr. Ryan was engaging in activities protected under 31 U.S.C. § 3730(h). This report to NIST effectively disclosed all the

material facts needed for NIST to become aware of an FCA violation by UL and to disqualify and potentially prosecute UL for a violation of the FCA. Mr. Ryan's inquiries and reports also resulted in enough information for a private citizen or UL employee or former employee such as Mr. Ryan to bring a Qui Tam action against UL for failure to disclose its conflict of interest to NIST and/or for submitting claims for and taking payments under a federal contract for which it was ineligible and disqualified.

55. To show that he was engaged in protected activity, i.e., acts in furtherance of an action under the False Claims Act (FCA), the employee does not need to have initiated a Qui Tam suit at the time of such acts, or even have contemplated initiating such a suit. It is enough that the employee was investigating matters that reasonably could lead to a viable FCA Qui Tam case. Here, Mr. Ryan was investigating and reporting to NIST (and the public) matters that reasonably could lead to a viable FCA Qui Tam case.

COUNT 2: RETALIATORY DISCHARGE IN VIOLATION OF THE INDIANA PRIVATE EMPLOYER WHISTLEBLOWER STATUTE

56. The preceding paragraphs and fact allegations are incorporated herein by reference.

57. IC 22-5-3-3 provides a private right of action for an employee of a private company under public contract who is fired after blowing the whistle in writing on a potential violation of law or misuse of public resources concerning the execution of a public contract.

58. Mr. Ryan is an employee of a private company, UL, which was under public contract with NIST as stated in the preceding paragraphs at the time he engaged in protected whistleblowing activities under the Indiana statute cited.

59. Mr. Ryan was fired by UL because he made written whistleblowing reports in writing internally to UL and externally to NIST and the public regarding apparent violations of the FCA and misuses of public resources by UL concerning the execution of

public contracts between NIST and UL as a result of UL's failure to disclose its conflict of interest and appearance of a conflict of interest to NIST and/or UL's submitting requests for payments and taking payments under a federal contract with NIST for which it was ineligible and disqualified due to its conflict of interest and appearance of a conflict of interest.

60. UL was contracted by NIST to perform fire resistance tests on models and/or components of the WTC floor assemblies during the time of Mr. Ryan's written whistleblowing disclosures to UL and NIST in which Ryan reported the material facts needed for NIST and other government officials and the public to perceive UL's conflict of interest which would disqualify UL from its NIST contract.

61. The FAR, 48 C.F.R. § 3.101-1 provides that "Government business shall be conducted in a manner above reproach and, except as authorized by statute or regulation, with complete impartiality and with preferential treatment for none. Transactions relating to the expenditure of public funds require the highest degree of public trust and an impeccable standard of conduct. ... "

62. The FAR also provides regarding "Organizational and Consultant Conflicts of Interest" as follows: Contracting officer responsibilities. (a) Using the general rules, procedures, and examples in this subpart, contracting officers shall analyze planned acquisitions in order to-- (1) Identify and evaluate potential organizational conflicts of interest as early in the acquisition process as possible; and (2) Avoid, neutralize, or mitigate significant potential conflicts before contract award. (b) Contracting officers should obtain the advice of counsel and the assistance of appropriate technical specialists in evaluating potential conflicts and in developing any necessary solicitation provisions and contract clauses (see 9.506). (c) Before issuing a solicitation for a contract that may involve a significant potential conflict, the contracting officer shall recommend to the head of the contracting activity a course of action for resolving the conflict (see 9.506).

(d) In fulfilling their responsibilities for identifying and resolving potential conflicts, contracting officers should avoid creating unnecessary delays, burdensome information requirements, and excessive documentation. The contracting officer's judgment need be formally documented only when a substantive issue concerning potential organizational conflict of interest exists. (e) The contracting officer shall award the contract to the apparent successful offeror unless a conflict of interest is determined to exist that cannot be avoided or mitigated. Before determining to withhold award based on conflict of interest considerations, the contracting officer shall notify the contractor, provide the reasons therefor, and allow the contractor a reasonable opportunity to respond. If the contracting officer finds that it is in the best interest of the United States to award the contract notwithstanding a conflict of interest, a request for waiver shall be submitted in accordance with 9.503. The waiver request and decision shall be included in the contract file. 48 C.F.R. § 9.504.

63. Mr. Ryan criticized NIST's investigation of the WTC building collapses as being inadequate, which investigation included the conduct of fire testing of floor assembly models of the WTC by UL. Mr. Ryan reported that UL had previously tested the steel components of the WTC and certified them as being sufficiently fire resistant that they should have withstood the fires from the jet fuel on 9/11/01.

64. At the time of Mr. Ryan's discharge from UL's employment, UL was a private employer under public contract with NIST. NIST as other federal agencies via its Request for Proposals (RFP) and otherwise would have required applicants and bidders for federal contracts such as UL to disclose any organizational conflicts of interest pursuant to the contracting officer's responsibilities pursuant to 48 C.F.R. § 9.504. As noted in the preceding paragraphs, UL's public statements immediately following Mr. Ryan's discharge by UL in which statements UL denied having conducted the fire resistance tests of the steel components used to construct the WTC, statements in direct

contradiction to statements made by UL's CEO in writing directly to Mr. Ryan prior to his discharge, indicate that UL had not fully disclosed its past involvement in these fire tests to NIST, thus not fully informing NIST of UL's organizational conflict of interest. Such failure to disclose by UL may or may not violate the FAR directly but because such a failure to disclose amounts to UL obtaining its contract with NIST under false pretenses (at minimum a knowing material omission), this UL conduct violates the federal False Claims Act, 31 U.S.C. § 3729 et seq.

65. Plaintiff Ryan was discharged because he reported to UL officials and NIST, and the public, the material facts necessary for NIST, other officials and the public to perceive UL's disqualifying conflict of interest and appearance of a conflict of interest in having both conducted past fire resistance testing of steel components used to construct the WTC and being involved in present day contract work for NIST involving fire resistance testing of the WTC floor assemblies.

66. Mr. Ryan's disclosures of these material facts reflecting UL's conflict of interest amounted to a disclosure of a violation of law, the federal False Claims Act, 31 U.S.C. § 3729 et seq, and a disclosure of a waste of public resources in that UL was being paid substantial sums of federal money to perform an important public investigation regarding one of the most important events and tragedies in the nations history but UL knew it could not perform that task with objectivity due to its conflict, and at minimum UL knew that if its past fire testing of the WTC steel components became publicly known, that public confidence in the integrity of the NIST study and the UL testing portion of the NIST study would be destroyed.

67. Mr. Ryan made good faith reasonable attempts to ascertain the correctness of the information he furnished in his written whistleblowing reports.

68. UL fired Mr. Ryan because UL perceived that Ryan had accurately reported the material facts showing its disqualifying conflict of interest and violation of the FCA

regarding its NIST contracts and/or because UL misperceived that Ryan had submitted incorrect and knowingly false information in his written whistleblowing reports.

IV. PRAYER FOR RELIEF

69. WHEREFORE, Plaintiff requests that this court award the following relief and damages to compensate Plaintiff for Defendant's wrongful discharge of Plaintiff:

- a. Award to Plaintiff back pay from the date Defendant terminated his employment under the Indiana whistleblower statute or double back pay under the FCA whistleblower provision;
- b. Award Plaintiff \$200,000 in front pay in lieu of reinstatement, or reinstatement;
- c. Award Plaintiff consequential damages for the cost of his relocation and job search, and the lost value of the medical insurance, retirement plan and other benefits Plaintiff would have enjoyed had Defendant not terminated his employment;
- d. Award Plaintiff \$100,000 in damages for emotional distress and damage to reputation;
- e. Award Plaintiff punitive damages as allowed by law;
- f. Award the Plaintiff such other and further relief to which the law entitles him and such other relief as this Court may deem proper.

Respectfully submitted,

/s Mick G. Harrison
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Dated: August 24, 2007

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Plaintiffs' Second Amended Complaint was electronically submitted as an attachment to Plaintiff's accompanying Motion for Leave to File an Amended Complaint and thereby automatically served on the parties indicated below. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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All done August 24, 2007.

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