

the provisions of § 3730(h) of the FCA , by reason of his termination by the defendant in retaliation for filing this action.

I.

The parties

1. Edward Quintana is an individual residing in Medina County, Texas. At all times relevant to this action he was an employee of the Boeing Company.

2. The Boeing Company is a Delaware corporation with headquarters in Chicago, Illinois, and is authorized to do business in Texas. Its registered agent for service of process in Texas is Corporation Service Company, which can be served at its registered office, 701 Brazos Street, Suite 1050, Austin, Texas 78701.

3. The Boeing Company, including its subsidiaries, is one of the world's largest aerospace firms. It employs approximately 153,800 employees in 48 U.S. states and 67 countries. It is a party to numerous contracts with the United States government, from which it derived approximately 51% of its revenues in 2005. Boeing and its subsidiaries are organized in six principal segments, based on the products and services they offer. The principal operating segments are

- Commercial aircraft
- Four units comprising its Integrated Defense Systems ("IDS") business
- Aircraft and Weapons Systems
- Network Systems
- Support Systems

- Launch and Orbital Systems

An additional segment of the company is Boeing Capital Corporation.

4. Boeing's IDS business is involved principally in the research, development, production, modification and support of aerospace and defense products and related systems and services, including military aircraft. IDS's primary customer is the United States Department of Defense. More than 90% of IDS's 2005 revenues were received from the United States Department of Defense.

5. The Support Systems component of Boeing's IDS business is engaged in operations, maintenance, training, upgrades and logistics support functions for military platforms and operations. Included in the scope of these operations are program areas for the maintenance and repair of the United States Air Force's fleet of KC-135 aircraft.

6. At issue in this action are false claims submitted by Boeing for work performed on KC-135 aircraft under a United States Air Force contract. The work was performed at Boeing Logistics Support System ("BLSS"), the facility formerly known as the Boeing Aerospace Support Center, located at KellyUSA, the former Kelly Air Force Base in San Antonio, Bexar County, Texas.

II.

Filing under seal

7. Because this action remains under seal, in accordance with 31 U.S.C. § 3730(b)(2), this amended complaint is filed *in camera* and will remain under seal and will not be served on the defendant until the court so orders. A copy of this amended

complaint is being served on the United States pursuant to 31 U.S.C. § 3730(b)(2) and Federal Rule of Civil Procedure 4(i)¹.

III.

Jurisdiction and venue

8. This court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1345, and 31 U.S.C. §§ 3730 and 3732. The action arises out of violations of 31 U.S.C. § 3729 by the defendant, and certain of the acts proscribed by 31 U.S.C. § 3729 on which the action is based occurred in this judicial district. In addition, the defendant transacts business in this judicial district, within the meaning of 31 U.S.C. § 3732(a).

9. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1395.

IV.

Plaintiff's direct and independent knowledge of the defendant's fraudulent conduct and voluntary disclosure of the information to the government before filing this action

10. Plaintiff gained direct and independent knowledge of the defendant's fraudulent acts in the course of his employment by the defendant as a machinist. From approximately May 2002 until the defendant fired him on 9 March 2007 in retaliation for filing this action, he worked on U.S. Air Force KC-135 aircraft at BLSS, in Bexar County, Texas.

¹Contemporaneously with the filing of the original complaint, written disclosure of substantially all material evidence and information the plaintiff possessed was served on the United States pursuant to 31 U.S.C. § 3730(b)(2) and Federal Rule of Civil Procedure 4(i). Supplemental written disclosures have been served on the United States since the original complaint was filed and served.

11. Before filing this action, the plaintiff personally and through counsel voluntarily provided substantially all material evidence and information in his possession to the United States.

12. To the plaintiff's knowledge, there has been no prior "public disclosure" of the allegations or transactions of fraud by the defendant that are the subject of this action. Nevertheless, if it is proved that any such public disclosure did occur before the filing of this action, the plaintiff will show that he is an "original source" of the information on which the allegations are based, within the meaning of 31 U.S.C. § 3730(e)(4)(A) and (B).

V.

Preliminary statement of the defendant's fraudulent conduct

13. Boeing devised and implemented a scheme to fraudulently inflate its charges for "non-routine" work performed under a contract to maintain, repair and modify aircraft for the United States Air Force at BLSS. The essence of Boeing's scheme was simple but effective: it inflated its estimates of the number of hours of labor required to accomplish specific "non-routine" repairs and maintenance tasks on KC-135 aircraft and falsified the records of work performed in accomplishing those tasks to correspond to its inflated estimates and to reflect time spent on those tasks by multiple employees, when in reality the work was done in much less time than the falsified records reflected and in most instances was done by the plaintiff alone. By falsifying its records, Boeing created fraudulent support for the false claims it submitted to the United States for substantially more hours of labor than actually were expended to accomplish the work done.

VI.

Boeing's fraudulent conduct

15. Since approximately May 2002, as a Boeing employee, the plaintiff has performed "non-routine" maintenance and repair work on the horizontal stabilizers of KC-135 aircraft and the fittings associated with the stabilizers. The task typically has consisted of removing paint, primer and other coatings, removing corrosion, resurfacing, and, when necessary, fabricating and installing titanium alloy shims and bushings in accordance with T.O 1C-135(k) A3-4, Fig. 6-12 and T.O 1C-135(k) A3-3, Fig. 3-4. The plaintiff often has been the only person who performed those particular tasks on any one aircraft, under any one "Non Conformance" assignment, and thus has performed the entire task on that aircraft. Nevertheless, the plaintiff has observed, and Boeing's records confirm, that Boeing has falsified its records to reflect the expenditure of additional time by multiple other Boeing employees (and in some instances by the plaintiff) on the same task, on the same aircraft, under the same "Non Conformance" assignment, thus falsely inflating the dollar amount billed to the government for these "non-routine" repairs and maintenance procedures under Boeing's contract.

16. Among the records that reflect Boeing's fraud are the multi-page document titled "**Non Conformance [space] Reference Only [space] Boeing Proprietary**" (NCR); the "**Boeing Aerospace Support Center Non Routine Form Supplement Sheet**"; and a corresponding, printable electronic record of each employee's time charged by Boeing to specific "Non Conformance" tasks, headed "**NCR Clocking Detail.**" Each Boeing

mechanic and each inspector has a unique, identifying stamp that is affixed by the individual, and dated, to document the completion and inspection of each stage of the assigned task.

17. By way of example and illustration, the plaintiff alone performed all of the work prescribed by Boeing's NCR number 227169N on KC 135 aircraft number 61-0290, completing it in a total of approximately 8.6 hours. A Quality Assurance inspector certified the plaintiff's completion of each stage of the job, as reflected by the **Non Routine Form Supplement Sheet** for NCR227169N. Nevertheless, Boeing's **NCR Clocking Detail** for NCR227169N reflects falsely that *nine* Boeing employees (including the plaintiff) worked on that job on *eight* dates from 07/11/2005 through 08/12/2005, for a total of 38.6 hours. The Clocking Detail reflects approximately correctly the total amount of time the plaintiff spent in performing the assigned task; it does not necessarily reflect correctly the dates the plaintiff actually worked on the task, however, because the plaintiff obeyed his supervisor's instructions regarding when to record his time on this and other NCR tasks. The following table summarizes what is reflected in the Clocking Detail and Non Routine Form Supplement Sheet entries in Boeing's records pertaining to this particular NCR:²

²The Clocking Detail record for each NCR reflects the specific dates and amounts of time charged for each employee, by name, who purportedly performed work under that particular NCR.

<u>NCR #</u>	<u>Aircraft #</u>	<u>Dates work was done</u>	<u>Clocking Detail dates recorded</u>	<u>Hours est.</u>	<u>Hours charged</u>	<u># Workers charged for</u>
227169N	61-0290	07/21/05 07/25/05	07/11/05 07/22/05 08/02/05 08/04/05 08/09/05 08/10/05 08/11/05 08/12/05	40.3	38.6	9

18. By way of further example and illustration, the attached Appendix reflects in tabular, summary form Boeing's falsification of time records pertaining to several representative NCRs that were performed solely by the plaintiff in a fraction of the amount of time for which Boeing claimed compensation.

19. When the plaintiff's protests to his supervisors about the fraudulent inflation of hours billed to the KC-135 program were rebuffed and produced no results, the plaintiff complained in writing to the Department of the Air Force Inspector General on 11/26/2005. On 12/17/2005, the plaintiff called Boeing's Ethics Hotline and reported the unlawful activities he had observed. He was not requested by Ethics Hotline personnel to provide documentation of his allegations.

20. On 01/10/2006, Boeing attorney Elizabeth Fleming traveled to BLSS and conducted an in-person, hostile interrogation of the plaintiff regarding his complaints about fraud. The plaintiff provided Ms. Fleming with documentation to support his allegations.

21. On 01/24/2006, a Boeing memorandum was issued to "All BLSS Personnel" on the subject of "Proper Labor Charging" by "Mike Salerno, Director of Finance." The

memorandum emphasized the necessity of “ensuring proper time keeping and recording of labor,” advised employees to report “any inappropriate time charging practices” to “the Ethics Advisor, Edward Garcia,” and cautioned that non-compliance with correct time charging practices is a “very serious infraction of company policy, contractual requirements, and Boeing ethical standards” that can result in “loss of business, fines and/or penalties for Boeing.”

22. Before Mike Salerno issued the memorandum of 01/24/2006, it was Boeing’s routine practice to inflate the estimated number of hours of labor required to complete this kind of task, as reflected on the “Estimate Print” page of Boeing’s NCR form, and then to ensure that approximately that number of hours of labor were clocked and billed to the job, even though the job was done in much less time. By way of example, Boeing’s records pertaining to NCR Nos. 230383N, 230385N, 227169N, 227170N, 227171N, 227172N, 237137N, and 237147N reflect this practice. As those records illustrate, before 01/24/2006 Boeing typically estimated the time required to accomplish most of these NCRs at slightly more than 40 hours of labor each and created false time records corresponding closely to its inflated estimates .

23. After the plaintiff complained to his superiors at BLSS, called the Boeing hotline, wrote to the Air Force Inspector General, and was interrogated by Boeing corporate counsel on 01/10/2006 (followed by the issuance of the Salerno memorandum of 01/24/06), Boeing began to pare down its inflated estimates of the time required to complete the kind of task in question. Boeing previously had routinely estimated and

billed (by falsifying its records of actual hours worked) as much as 40 hours of labor for this kind of task. Subsequent time estimates for the same kind of task were reduced substantially, as were employee clock hours claimed. By way of example, Boeing's records pertaining to NCR Nos. 250224N (01/26/2006) and 251679N (02/08/2006) reflect this change in Boeing's conduct.

24. NCR Nos. 247989N, 247990N, 247993N, and 247997N, all pertaining to KC-135 aircraft number 60-0348, are particularly illustrative of Boeing's knowledge that its previous estimates of labor time were inflated. The original estimate of labor hours required for each of those four NCRs was completed and printed on 01/10/2006 (the same day the plaintiff was interrogated by Boeing corporate counsel), and each reflected that a total of 40.3 hours of labor would be needed to accomplish the work on each of those four NCRs. Boeing reprinted the four documents eight days later, on 01/18/2006, as if they were the original estimates. No change was made to the scope of work on any of the four NCRs, but on each of the reprinted and re-dated documents the estimate of time required was reduced to 25 hours. Each of the reprinted and re-dated estimate sheets still reflected the date and time of day of the original, 40.3 hour estimate, 01/10/2006.

25. From his personal observation in the workplace at BLSS, plaintiff alleges that the fraudulent practices described with respect to the specific tasks performed by him are not limited to those tasks, but pervade the many and varied types of "non-routine" repair and maintenance tasks performed at BLSS under the KC-135 contract. Boeing routinely and knowingly has inflated its estimates of the number of hours of labor required to

accomplish “non-routine” repair and maintenance tasks of all kinds on KC-135 aircraft and falsified the records of work performed in accomplishing those tasks to correspond to its inflated estimates and to reflect time spent on those tasks by multiple employees, just as it has done with respect to the tasks the plaintiff performed when in reality the work was done in much less time than the falsified records reflect, and by fewer employees.

VII.

Boeing’s retaliatory discharge of the plaintiff after learning of this action

26. As alleged in paragraphs 19, 20 and 23 above, the plaintiff commenced his efforts to put an end to the fraudulent practices described in this complaint at least as long ago as November, 2005. His efforts quickly came to the attention of Boeing’s corporate legal department and resulted in his being interviewed on multiple occasions by Boeing investigators and attorneys. When he was interviewed by corporate counsel Elizabeth Fleming on 10 January 2006, he provided Ms. Fleming with documents supporting his allegations.

27. The plaintiff’s actions in complaining to his superiors about Boeing’s fraudulent practices and reporting those practices to the Department of the Air Force Inspector General, and his filing of this action, were lawful acts done by him in furtherance of an action under the federal False Claims Act, within the meaning of 31 U.S.C. § 3730(h).

28. On 27 November 2006 the plaintiff filed this action, under seal, on behalf of the United States.

29. On 23 February 2007, pursuant to the authority granted by this court's order dated 15 February 2007 and with the plaintiff's consent, counsel for the United States provided a copy of the plaintiff's original complaint to both corporate and retained counsel for Boeing at a meeting in Oklahoma City, Oklahoma.

30. Two weeks later, on 9 March 2007, the plaintiff was summoned to the office of Larry Beaman, a Boeing senior manager at BLSS, who handed him a Boeing "Employee Corrective Action Memo" notifying him

You are being terminated effective today, March 9, 2007, from The Boeing Company. As a result of your dismissal, you will not be eligible for rehire at any Boeing facility and/or subsidiary, or any vendor or contractor that provides onsite service at any Boeing facility.

31. The "Employee Corrective Action Memo" recites that the plaintiff was terminated for "[f]ailure to report time accurately" and adds as "Aggravating Factors,"

unauthorized charging to government contract and falsification of time records. A corporate investigation revealed that you repeatedly charged time to closed NCRs. That is, the charges occurred after the work was completed on the repair as documented in IPI.

32. The misconduct attributed to the plaintiff in the Memo mirrors the fraudulent corporate practice that the plaintiff complained of to Boeing and reported to the United States in an effort to put a stop to it. Because he was terminated two weeks after Boeing counsel were provided with a copy of his original complaint filed in this action, and because the "Employee Corrective Action Memo" reflects on its face that he had received "No Previous Corrective Action(s)," the plaintiff alleges that Boeing terminated him in

retaliation for notifying the United States of Boeing's fraud and filing this action on the government's behalf under the False Claims Act.

33. Because other Boeing employees have knowledge of the same fraudulent practices that are the subject of this action but are concerned about their job security, the plaintiff alleges that an additional reason for Boeing's termination of him was to intimidate other employees who might otherwise be willing to cooperate in the government's investigation of those practices.

34. As a result of Boeing's retaliatory termination, the plaintiff has been damaged. His ability to obtain other employment will be impaired by the derogatory allegations in the "Employee Corrective Action Memo." He has been advised by Boeing's group insurance carriers that his group health and life insurance benefits would end as of 31 March 2007, requiring him either to forego insurance coverage or purchase replacement coverage at substantially greater cost to him than the cost of his previous group insurance as a Boeing employee. His benefits under Boeing's employee pension plan, which would have vested in May, 2007, are forfeited. His annual earnings as a Boeing employee, his seniority, and any future increases in wages and benefits, are terminated. He now requires the services of counsel to enforce his rights through litigation under the False Claims Act.

35. Because of Boeing's retaliatory termination of his employment, the plaintiff is entitled to the full panoply of relief provided under § 3730(h) of the False Claims Act.

VIII.

Count One

Federal False Claims Act - 31 U.S.C. § 3729(a)(1)

36. The plaintiff realleges the allegations contained in paragraphs 1 through 25.

37. This is a claim for treble damages, civil penalties, costs, expenses and attorneys' fees under the Federal False Claims Act, 31 U.S.C. § 3729, *et seq.*, as amended.

38. By means of the acts described above, Boeing has knowingly presented or caused to be presented to the United States false or fraudulent claims for payment. The United States, unaware of the falsity of the claims made, and in reliance on the accuracy thereof, paid Boeing for claims that otherwise would not have been allowed.

39. By reason of these payments, the United States has been damaged, and continues to be damaged, in a substantial amount.

IX.

Count Two

Federal False Claims Act, 31 U.S.C. § 3729(a)(2)

40. The plaintiff realleges the allegations contained in paragraphs 1 through 25.

41. This is a claim for treble damages, civil penalties, costs, expenses and attorneys' fees under the Federal False Claims Act, 31 U.S.C. § 3729, *et seq.*, as amended.

42. By means of the acts described above, Boeing has knowingly made, used, or caused to be made or used, false records and statements to get false or fraudulent claims paid by the United States. The United States, unaware of the falsity of the claims made,

and in reliance on the accuracy thereof, paid Boeing for claims that otherwise would not have been allowed.

43. By reason of these payments, the United States has been damaged, and continues to be damaged, in a substantial amount.

X.

Count Three

Federal False Claims Act, 31 U.S.C. § 3730(h)

44. The plaintiff realleges the allegations contained in paragraphs 1 through 35.

45. Boeing's termination of the plaintiff's employment because of lawful acts done by him in furtherance of an action under 31 U.S.C. § 3730(h) was retaliatory and constitutes discrimination against him in the terms and conditions of his employment, in violation of 31 U.S.C. § 3730(h).

46. By reason of Boeing's retaliatory action against him, the plaintiff has sustained and will continue to sustain substantial damages, for all of which he is entitled to the relief provided under 31 U.S.C. § 3730(h).

XI.

Jury Demand

47. Plaintiff demands a trial by jury.

X.

Conclusion

The defendant is liable to the United States for treble damages and civil penalties, pursuant to 31 U.S.C. § 3729(a). In addition, the plaintiff is entitled to recover from the

defendant his reasonable expenses , attorneys' fees and costs incurred in prosecuting this action, pursuant to 31 U.S.C. § 3730(d).

In addition, the plaintiff is entitled to recover from the defendant all relief necessary to make him whole by reason of his retaliatory termination, including reinstatement with the same seniority status he would have had but for the defendant's retaliatory action; two times the amount of back pay lost; interest on the back pay; and compensation for special damages sustained as a result of the defendant's retaliatory action, including litigation costs and reasonable attorneys' fees, pursuant to 31 U.S.C. § 3730(h).

WHEREFORE, plaintiff prays that upon trial or final hearing the court grant judgment for plaintiff and the United States against the defendant as follows:

- (a) for three times the amount of damages proved, pursuant to 31 U.S.C. § 3729(a);
- (b) for civil penalties for each false claim, pursuant to 31 U.S.C. § 3729(a);
- (c) for pre-judgment and post-judgment interest at the rates permitted by law;
- (d) for the plaintiff's reasonable expenses, attorneys' fees and costs incurred in pursuing this action on behalf of the United States;
- (e) for costs of court;
- (f) for such other and further relief as may be authorized by law.

The plaintiff further prays that he be awarded an appropriate percentage of the proceeds of this action, pursuant to 31 U.S.C. § 3730(d).

The plaintiff further prays that he recover from the defendant (1) all relief necessary to make him whole by reason of the defendant's retaliatory action against him, pursuant

to 31 U.S.C. § 3730(h), and (2) his reasonable attorneys' fees, costs and expenses incurred in enforcing his rights under 31 U.S.C. § 3730(h).

Respectfully submitted,

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ATTORNEYS FOR *QUI TAM* PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been delivered, pursuant to Fed. R. Civ. P. 5(b) and 31 U.S.C. § 3730(b)(2), by certified mail, return receipt requested, on this ~~16~~¹⁷ day of April, 2007, to:

Honorable Alberto Gonzales
Attorney General of the United States
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Honorable Johnny Sutton
United States Attorney for the
Western District of Texas
601 N.W. Loop 410
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