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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

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CLERK US DISTRICT COURT
ALEXANDRIA, VIRGINIA

UNITED STATES EX REL PAUL FUNK, :
:
Plaintiff :
:

Case No. 1:09-cv-296

JURY TRIAL DEMANDED

v. :

FILED UNDER SEAL

pursuant to 31 U.S.C § 3730(b)(2)

MISSION ESSENTIAL PERSONNEL, :
LLC; :
LANGUAGE LEARNING :
ENTERPRISES, INC.; and :
CEIBA ENTERPRISES, INC., dba :
GRACOR LANGUAGE SERVICES, INC. :
:
Defendants :
:

RELATOR'S FIRST AMENDED COMPLAINT

Qui Tam Relator, Paul Funk ("Relator" or "Mr. Funk") brings this First Amended Complaint in the name of the United States Government for false claims that were submitted or caused to be submitted to the United States Government by Defendants, Mission Essential Personnel, LLC ("MEP"), Language Learning Enterprises, Inc. ("LLE"), and Ceiba Enterprises, Inc. dba Gracor Language Services, Inc. ("Gracor"), collectively "Defendants."

Under a Contract with the United States Government, Defendant MEP and its subcontractors, Defendants LLE and Gracor provided language translation, testing and interpretation services to the United States Army in Iraq and Afghanistan. As set forth below, Defendants wholly failed to provide qualified linguists to the military as required by the Contract.

I. INTRODUCTION

1. This is an action to recover damages and civil penalties on behalf of the United

States of America ("United States") arising from false statements and claims made and presented by the Defendant, Mission Essential Personnel, LLC ("MEP"), Language Learning Enterprises, Inc. ("LLE"), and Ceiba Enterprises dba Gracor Language Services, Inc. ("Gracor"), their agents, employees, and/or co-conspirators in violation of the Federal Civil False Claims Act, 31 U.S.C. §§ 3729 et seq., as amended ("the Act"). The violations consist of fraudulent misrepresentations relating to the quantity and quality of services performed under a contract with the United States.

2. The Act provides that any person who knowingly submits or causes to be submitted a false or fraudulent claim to the United States for payment or approval is liable for a civil penalty of not less than \$5,500 and not more than \$11,000 for each such claim submitted or paid, plus three times the amount of the damages sustained by the United States. Liability attaches both when a defendant knowingly seeks payment that is unwarranted from the United States and when false records or statements are knowingly created or caused to be used to conceal, avoid or decrease an obligation to pay or transmit money to the United States. The Act allows any person having information regarding a false or fraudulent claim against the United States to bring an action for himself ("Relator") and for the United States and to share in any recovery.

3. Based on those provisions, Relator, Paul Funk, seeks to recover damages and civil penalties arising from Defendants MEP, LLE, and Gracor's presentation of false records, claims, and statements to the United States and its agents in connection with the Defendants' claims for payment for services required to be performed under a contract with the United States military. Defendants' actions were designed to maximize profits illegally at the government's expense. Defendants' fraud includes the following:

- a. MEP, LLE, and Gracor fraudulently presented and/or caused to present claims to the United States and received therefrom payment for services that were not rendered under an MEP contract with the United States military (Contract No.

W911W4-07-D-0010);

- b. MEP, LLE, and Gracor fraudulently presented and/or caused to present claims to the United States and received payment therefrom for services that were not rendered in accordance with an MEP contract with the United States military (Contract No. W911W4-07-D-0010); and
- c. MEP fraudulently presented claims to the United States and received reimbursement of per diem amounts that were not allotable under an MEP contract with the United States military (Contract No. W911W4-07-D-0010).

II. JURISDICTION AND VENUE

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

5. The Court has personal jurisdiction over the Defendants pursuant to 31 U.S.C. § 3732(a), which authorizes nationwide service of process and because the Defendants can be found, transact business, and/or presented the actionable false claims to the United States in the Eastern District of Virginia.

6. Venue is proper in the Eastern District of Virginia pursuant to 31 U.S.C. § 3732(a) because the Defendants can be found, transact business, and/or presented the actionable false claims to the United States in the Eastern District of Virginia.

7. In accordance with 31 U.S.C. § 3730(b)(2), this First Amended Complaint has been filed under seal and will remain under seal for a period of at least 60 days from its filing date or until the Court so orders, and shall not be served upon the Defendants until after the Court so orders.

III. PARTIES

8. Relator Paul Funk is a United States citizen and resides in Virginia.

9. Defendant Mission Essential Personnel, LLC (“MEP”), is an Ohio limited liability company headquartered at 4343 Easton Commons, Suite, 100, Columbus, Ohio 43219. MEP has “major offices” in Chantilly and Lorton, Virginia.

10. Defendant Language Learning Enterprises, Inc. (“LLE”) is headquartered at 1627 K Street, N.W., Suite 610, Washington, D.C. 20006. LLE claims that, “since 1979,” it “has been the leading language services provider to government, business and non-profit organizations around the world.” *See* www.lle-inc.com.

11. Defendant Ceiba Enterprises dba Gracor Language Services, Inc. (“Gracor”) is an Ohio translation services company with corporate headquarters at 159 Baranof West, Westerville, Ohio 43081.

12. Defendant MEP contracted with Defendants LLE and Gracor to perform language proficiency testing under MEP’s Contract with the Army to provide linguists.

IV. FACTS

13. Mission Essential Personnel, LLC (MEP) represents that it is a “global professional services firm” headquartered in Columbus, Ohio.

14. MEP represents that it “supports state and federal agencies, NGOs, international organizations, and global customers with linguists and interpreters, analysts, training, and program management in intelligence, defense, peace support, emerging markets and law enforcement operations.”

15. MEP represents that it has more than 4,000 employees and has “major offices” in

Chantilly, Virginia; Lorton, Virginia; Augusta, Georgia; Columbus, Georgia; Fayetteville, North Carolina; Linthicum Heights, Maryland; and Mainz, Germany.

A. MEP Army Contract W911W4-07-D-0010 (Exhibit A)

16. On September 7, 2007, MEP was awarded Contract W911W4-07-D-0010 (“Contract”) by the United States Government for the “Management and Support of Translation and Interpretation Services” for “Operation Enduring Freedom-Afghanistan (OEF-A).” See Exhibit A. The stated purpose of the Contract is to “provide management services necessary to rapidly and securely recruit and deploy foreign language interpretation and translation services in support of United States Army, its Unified Commands...attached forces, combined forces, and joint elements who [are] executing the military mission known as Operation Enduring Freedom—Afghanistan (OEF-A).” *Id.*, para. 1.0.

17. The initial Contract amount is \$414,415.823.00. On information and belief, MEP anticipates that the initial Contract amount will be increased by \$200,000,000.00.

18. Under the Contract, MEP is required, as part of its “pre-screening” process, to recruit linguist candidates with “certain skills.” *Id.*, at para. 2.1.2. Specifically, Category I (“CAT I”) linguists, who are linguists locally hired or hired from a region outside the Area of Operations and who do not require a security clearance, must have an Interagency Language Roundtable (“ILR”) proficiency of level 4 to 5 in the Specified Contract Required Language (“SCRL”) and an ILR level 2+ proficiency in English. *Id.*, at para. 2.1.2.2.

19. Under the Contract, Category II (“CAT II”) linguists, who are United States citizens who have been screened by U.S. Army counterintelligence personnel, must have an ILR proficiency of level 4 to 5 in the SCRL language and an ILR level 2+ proficiency in English. *Id.*

20. Under the Contract, Category III (“CAT III”) linguists, generally, U.S. citizens who possess a “Top Secret” security clearance, must have an ILR level 3 in the SCRL language and be fluent in English. *Id.*

21. The Contract requires MEP to screen applicants to ensure compliance with the language proficiency requirements. Specifically, MEP is required to administer testing to linguist applicants to ensure that they possess the necessary interpreting and translation skills, including the following: interpretation into and from English and the SCRL language(s); written translation of general and technical material into and from English and the SCRL language(s); interpreting aptitude; transcription of aural SCRL language material into written form; and advising supported commanders and organizations on the cultural and ethnic significance of documents. *Id.*, at para 2.1.2.1.

22. Under the Contract’s quality provisions, aimed at ensuring Contract compliance, MEP is required to “implement a complete quality control program that identifies potential and actual problem areas in providing requirements of the contract...and the results of corrective actions taken throughout the life of the contract.” *Id.*, at para. 2.5.1.

23. Under the Contract, MEP is only entitled to reimbursement by the United States “for those candidates that successfully complete the screening process or for failed candidates where the contractor has properly completed and documented the required contractor pre-screening...” The Contract does not provide for payment to MEP for candidates who do not pass the minimum linguist testing requirements. The Contract does not provide MEP with a mechanism to qualify for deployment and obtain payment for the services of candidates who failed language testing. *Id.*, at para. 2.1.2.5.

B. Relator Paul Funk and MEP

24. Relator Paul Funk was employed as Director of MEP's Pre-Deployment Processing Center in Linthicum, Maryland from approximately December 2007 until December 13, 2008.

25. As MEP's Pre-Deployment Processing Center Director, Relator was responsible for supervising the language proficiency testing of prospective applicants whom MEP recruited to serve as translators and interpreters in support of the United States military's "Operation Enduring Freedom" in Afghanistan under Contract No. W911W4-07-D-0010. As a result of his job responsibilities, Mr. Funk has direct and independent knowledge of all matters set forth below.

C. MEP's False Claims: Testing and Language Skill Deficiencies

26. Throughout the term of the Contract, MEP knowingly and systematically defrauded the United States by presenting explicit and/or implicit false claims to the United States' Contracting Authority (Headquarters, INSCOM) for payment. The claims were false because a significant portion of the linguists MEP supplied did not have the contractually-required language interpretation and translation skills that were essential to the Contract.

27. Throughout the Contract term, MEP knowingly employed as CAT II linguists and deployed to Afghanistan individuals who failed to meet the ILR proficiency requirements in the SCRL language(s) (i.e. level 4 to 5) or English (i.e. 2 +) required by the Contract.

28. In the period November 18, 2007 to June 20, 2008, approximately 28% (86 of 310) of the linguists MEP hired and tested failed to meet the ILR proficiency testing requirements in the SCRL language(s) and English. *See Exhibit B.* Nevertheless, MEP falsely

represented to the Government that these failed linguists had passed the Contract's language proficiency requirements.

29. MEP singularly and in conspiracy with its subcontractors, Defendants LLE and Gracor, failed to adequately test the ILR proficiency of individuals recruited and deployed to Afghanistan under MEP's Contract.

30. Defendants MEP, LLE and/or Gracor conducted Oral Proficiency Interview ("OPI") testing of linguist candidates over the telephone, rather than in person. By conducting the OPI tests over the telephone, rather than in person, Defendants MEP, LLE and/or Gracor recruited and deployed as linguists numerous individuals who could not speak the target language or speak the English language. These individuals thus tested were incapable of serving as qualified translators and interpreters to the United States military in Afghanistan. Oral testing in person is the standard and accepted practice within the interpretation and translation service industry and oral in-person testing is the only way to prevent fraud by the person being tested.

31. Relator Funk reported in May 2008 to his MEP superiors, including, but not limited to, David Slovina, MEP Director of Recruiting and Testing, and Frank Marois, MEP Program Manager, that the OPI testing was defective and that MEP had, as a result, recruited candidates who could not speak English. Despite Mr. Funk's report, Defendants MEP, LLE, and Gracor continued to perform the OPI tests by telephone, rather than in person.

32. Defendant MEP, singularly and in conspiracy with Defendants LLE and Gracor, falsified the ILR written test results for linguists tested. A number of linguists whom MEP recruited failed the written proficiency exams. However, MEP, in conspiracy with Defendants LLE and Gracor, falsified the test results to make it appear that these individuals passed the

proficiency exams. Subsequently, MEP deployed these individuals as linguists in Afghanistan and supplied them to the Army under the Contract, without informing the Government that these linguists had actually failed the written proficiency exams, meaning they could not sufficiently read or write the target foreign language or English.

33. In the spring of 2008 Relator reported the falsified test results described in the preceding paragraph to his MEP superiors, including David Slovina and MEP Vice President Mark Peltier. Subsequently, Mr. Peltier told Mr. Funk that he (Peltier) did not believe the test results were important. Mr. Slovina attempted to have the reading and writing exams eliminated from MEP's linguist recruitment and testing procedures.

34. Defendant MEP, singularly and in conspiracy with Defendants LLE and Gracor, permitted linguist candidates who failed the written proficiency exams or cheated on the written proficiency exams to take those exams repeated times until they had enough test knowledge that they achieved a "passing" grade, even though they did not actually have the proficiency levels required by the Contract with the Army. Through this ruse, Defendants MEP, LLE, and Gracor procured and deployed to Afghanistan numerous individuals who, in fact, did not meet the ILR proficiency requirements.

35. Relator Funk reported specific instances of linguist applicants' cheating on written proficiency exams to his MEP superiors. Thereafter, in late June or early July 2008, MEP removed Mr. Funk's oversight responsibility for the written proficiency exams.

36. Defendant MEP performed no ILR testing for Cat I linguists in Afghanistan, as required under the Contract.

37. In May 2008, Relator Funk reported MEP's failure to perform ILR testing of Cat I

linguists to Marc Peltier, MEP Vice President of Operations. Nevertheless, MEP continued its practice of not testing Cat I linguists in Afghanistan and then hiring and deploying as Cat I linguists in Afghanistan individuals who were not qualified to serve as translators and interpreters to the United States military.

38. Defendant MEP's deployment of interpreters and translators of numerous individuals who do not meet the Army Contract's language proficiency requirements has seriously undermined "Operation Enduring Freedom" in Afghanistan.

39. Despite the fact that many linguist applicants failed to pass the Contract's language-proficiency testing requirements, which are material contractual terms, MEP knowingly presented to the United States false claims for payment and reimbursement of the linguists' services and expenses and received payment thereto.

40. Since Defendant MEP compensates its linguists deployed to Afghanistan at the annual rate of approximately \$210,000.00 for their work in theater, MEP's fraudulent billing of the United States is substantial.

C. MEP's False Claims: Services Not Authorized by the Contract

41. Throughout the Contract term, Defendant MEP knowingly and systematically defrauded the United States by presenting false claims to the Contracting Authority (Headquarters, INSCOM) for payment of services. The claims were false because they were for services neither authorized nor provided under the Contract.

1. Linthicum, Maryland DOMEX

42. Defendant MEP assigned Cat II linguists to work at MEP's Document and Media Exploitation Cell ("DOMEX") in Linthicum, Maryland. Such work was not authorized under the

Contract. MEP only required these Cat II linguists work approximately 2 hours per day for a total of 10 hours weekly. MEP knowingly presented false claims to the United States Government for payment of the linguists' services, falsely representing that these linguists had worked 8 hours daily for a full 40 hour week, doing DOMEX work.

43. Since Defendant MEP paid linguists at the rate of approximately \$1,923.00 bi-weekly (i.e. \$50,000.00 annually) for Linthicum, Maryland DOMEX work, MEP's false claims submitted to the United States is substantial.

2. False Claims: Ft. Benning, Georgia DOCEX Work

44. MEP assigned Cat II linguists to work in Fort Benning, Georgia on a project titled "DOCEX" (Document Exploitation), despite the fact that such work was not authorized under the Contract.

45. Even though the DOCEX work done by its linguists in Ft. Benning, Georgia was not properly billed to the United States Government and not covered by the Army Contract, Defendant MEP knowingly presented claims to the United States Government for reimbursement of the linguists' services on the DOCEX project.

D. False Claims: No Quality Control Program

46. Throughout the Contract term, MEP knowingly and systematically defrauded the United States by submitting claims and thus certifying to the Contracting Authority (Headquarters, INSCOM) that the company had complied with the material provisions of the Contract requiring quality control, including the Contract provision requiring documentation of failed candidates, when, in fact, Defendant had not complied with these Contract requirements.

47. While Defendant MEP's Army Contract requires MEP to "implement a complete

quality control program that identifies potential and actual problem areas in providing requirements of the contract...and the results of corrective actions taken throughout the life of the contract..." MEP knowingly failed to implement a quality control program.

48. Defendant MEP's deliberate failure to implement the contractually-required quality control program was designed to enable and, in fact, enabled the company to falsely bill the United States Government for many millions of dollars.

E. False Claims: Per Diem Payments Not Authorized

49. Throughout the Contract term, MEP knowingly and systematically submitted false claims to the Contracting Authority (Headquarters, INSCOM) for per diem payments that were not allowable under the Contract.

50. Defendant MEP presented claims to the United States Army Contracting Authority for payment of full or partial per diem rates for its interpreters and translators under circumstances where such per diem payments were not allowable under the Contract. A partial list of the fraudulent per diem payments requested and paid is attached as Exhibit C.

COUNT ONE

False Claims Act – Presentation of False Claims

[31 U.S.C. § 3729(a)(1), 31 U.S.C. § 3729(a)(1)(A) as amended in 2009]

51. Relator incorporates by reference the allegations made in the prior Paragraphs of this Complaint as though set forth herein in full.

52. Through the acts described above, Defendants MEP, LLE, Gracor, and their agents and employees knowingly presented and caused to be presented to an officer or employee of the United States Government a false and/or fraudulent claim for payment or approval in violation of 31 U.S.C. § 3729(a)(1).

COUNT TWO
False Claims Act – Making or Using False
Record or Statement to Cause Claim to be Paid
[31 U.S.C. § 3729(a)(2), 31 U.S.C. § 3729(a)(1)(B) as amended in 2009]

53. Relator incorporates by reference the allegations made in the prior Paragraphs of this First Amended Complaint as though set forth herein in full.

54. Through the acts described above and otherwise, Defendants MEP, LLE, Gracor, and their agents and employees knowingly made, used, and/or caused to be made or used false records and statements in violation of 31 U.S.C. §§ 3729(a)(2) in order to get such false and fraudulent claims paid and approved by the United States Government.

COUNT THREE
False Claims Act – Conspiracy
[31 U.S.C. § 3729(a)(3), 31 U.S.C. § 3729(a)(1)(C) as amended in 2009]

55. Relator incorporates by reference the allegations made in the prior Paragraphs of this First Amended Complaint as though set forth herein in full.

56. Through the acts described above and otherwise, Defendants MEP, LLE, and Gracor entered into a conspiracy or conspiracies to defraud the United States by getting false and fraudulent claims allowed or paid in violation of 31 U.S.C. § 3729(a)(3).

57. Defendants MEP, LLE, and Gracor conspired to omit disclosing or to actively conceal facts which, if known, would have reduced government obligations to Defendants or resulted in repayments from Defendants to government programs.

58. MEP, LLE, Gracor, and their agents and employees have taken substantial steps in furtherance of those conspiracies, *inter alia*, by preparing false records, by submitting claims for reimbursement to the Government for payment or approval, and by directing their agents and

personnel not to disclose and/or to conceal their fraudulent practices.

59. The United States, unaware of Defendants' conspiracy or the falsity of the records, statements and claims made by MEP, LLE, Gracor, and their agents and employees, and as a result thereof, have paid and continue to pay millions of dollars that they would not otherwise have paid. Furthermore, because of the false records, statements, claims, and omissions by Defendants and their agents and employees, the United States has not recovered federal funds from the Defendants that otherwise would have been recovered.

COUNT FOUR

False Claims Act – Making or Using False Record or Statement to Conceal, Avoid and/or Decrease Obligation to Repay Money

[31 U.S.C. § 3729(a)(7), 31 U.S.C. § 3729(a)(1)(G) as amended in 2009]

60. Relator incorporates by reference the allegations made in the prior Paragraphs of this First Amended Complaint as though set forth herein in full.

61. Through the acts described above, in violation of 31 U.S.C. § 3729(a)(7), Defendants MEP, LLE, Gracor, and their agents and employees knowingly made, used, and caused to be made or used false records and statements to conceal, avoid, and/or decrease Defendants' obligation to repay money to the United States Government that Defendants improperly or fraudulently received. Defendants also failed to disclose material facts that would have resulted in substantial repayments to the United States.

COUNT FIVE

False Claims Act Retaliation Violation

[31 U.S.C. § 3730(h)]

62. Relator incorporates by reference the allegations made in the prior Paragraphs of this First Amended Complaint as though set forth herein in full.

63. Defendant MEP has a duty under the False Claims Act, 31 U.S.C. § 3730(h), to

refrain from taking retaliatory actions against employees who take lawful actions in furtherance of a False Claims Act action, including investigation for, testimony for, or assistance in an action filed under this section.

64. Relator took lawful actions in furtherance of a False Claims Act action, including investigation for, testimony for, and/or assistance in an action filed under this section and, as such, engaged in protected activity under the False Claims Act and other laws.

65. While employed by Defendant MEP and after his employment was illegally terminated, Relator repeatedly questioned, investigated, and reported internally and subsequently to appropriate Government officials, Defendant MEP's improper practices and billing in furtherance of a False Claims Act action.

66. Defendant MEP knew or should have known that Relator's activities investigating and opposing their unlawful conduct, including his investigation for, testimony for, or assistance in an action filed under this section, were in connection with this False Claims Act action.

67. Defendant MEP retaliated against Relator for his lawful actions taken in furtherance of a False Claims Act action, including but not limited to his investigation and assistance in an action alleging Defendants' violations of the False Claims Act and Relator's efforts to prevent further False Claims Act violations by Defendants. Defendant MEP terminated Relator on December 13, 2008, after his continued complaints about Defendant MEP's false billing practices as explained above.

68. Prior to his termination and after Relator had begun making objections to Defendant MEP's false and fraudulent billing, Defendant MEP and its agents and employees made Relator work excessive hours, refused to hire sufficient staff to work with Relator's

existing staff when the number of linguists being recruited increased or when openings occurred due to resignations, illness, transfer, or terminations, and made trumped-up false complaints to MEP's Human Resources Department about Relator, all in an attempt to force Relator to resign his position.

69. The actions of Defendant MEP damaged and continue to damage Relator in violation of 31 U.S.C. § 3730(h), in an amount to be determined at trial.

70. Defendant MEP's misconduct and illegal treatment of Relator has the effect of stifling reports of military contractor fraud. This treatment effectively warned other employees of Defendant that they should not engage in honest and open reporting of Defendant's conduct.

71. Pursuant to 31 U.S.C. § 3730(h), Relator is entitled to litigation costs, expenses, and reasonable attorneys' fees incurred in the vindication of his reputation and the pursuit of his retaliation claims.

PRAYER FOR RELIEF

WHEREFORE, Relator Paul Funk requests that judgment be entered against Defendants ordering that:

1. That Defendants cease and desist from violating the False Claims Act, 31 U.S.C. § 3729, *et seq.*;
2. That the Court enter judgment against Defendants in an amount equal to three times the amount of damages the United States has sustained as a result of Defendants' actions, as well as a civil penalty against each Defendant of not less than \$5,500 and not more than \$11,000, for each violation of 31 U.S.C. § 3729;
3. Relator be awarded the maximum amount allowed pursuant to 31 U.S.C. §

3730(d) of the Federal Civil False Claims Act;

4. Relator be awarded all costs and expenses of this action, including attorneys' fees, pursuant to 31 U.S.C. § 3730(d);

5. Defendants be enjoined from concealing, removing, encumbering or disposing of assets that may be required to pay the civil monetary penalties imposed by the Court;


6. Defendants disgorge all sums by which they have been enriched unjustly by their wrongful conduct; and

7. The United States and Relator recover all such other relief as the Court deems just and proper.

DATED: April 1, 2010

Respectfully submitted,

By:



Mark Hanna
Virginia Bar Number 45442
MURPHY ANDERSON PLLC
1701 K St. NW, Suite 210
Washington, DC 20006
202-223-2620
202-223-8651 (Fax)
mhanna@murphypllc.com
Counsel for Relator

Scott Newar
700 Louisiana, 25th Floor
Houston, Texas 77002
713- 220-9155
713- 223-9319 (Fax)
newar@newarlaw.com
Counsel for Relator
Pro hac vice forthcoming


Ann Lugbill
Michelle Woolley
MURPHY ANDERSON PLLC
1701 K St. NW, Suite 210
Washington, DC 20006
202-223-2620
202-223-8651 (Fax)
alugbill@murphypllc.com
mwoolley@murphypllc.com
Counsel for Relator
Pro hac vice forthcoming

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was served via first class mail, this April 1, 2010, to:

Mr. Alan Gale
United States Department of Justice
U. S. Department of Justice
9500 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Mr. Gerard Mene
Assistant U.S. Attorney
2100 Jamieson Avenue
Alexandria, VA 22314



Mark Hanna
Virginia Bar Number 45442
MURPHY ANDERSON PLLC
1701 K St. NW, Suite 210
Washington, DC 20006
(202)223-2620
(202)223-8651 (Fax)
mhanna@murphypllc.com
Attorney for Relator