

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
(Alexandria Division)

UNITED STATES EX REL. DRC, INC.,
ROBERT J. ISAKSON and WILLIAM
D. BALDWIN
740 Museum Drive
Mobile, Alabama 36608,

Plaintiff/Relators,

v.

CUSTER BATTLES, LLC
3959 Pender Drive
Fairfax, Virginia 22030,

SECURE GLOBAL DISTRIBUTION
4th Floor Zephyr House
122 Mary Street, P.O. Box 709
Georgetown, Grand Cayman Island
Cayman Islands,

MIDDLE EAST LEASING
4th Floor Zephyr House
122 Mary Street, P.O. Box 709
Georgetown, Grand Cayman Island
Cayman Islands,

CUSTER BATTLES LEVANT
Solidere, Central District
Omar al Daouk Street
Khaled at Daouk Building, 2nd Floor
Beirut, Lebanon,

LARU, LTD.
P.O. Box 51263,
3503 Limassol, Cyprus,

UNDER SEAL
(filed in camera)

Case No.: CV-04-199-A

SCOTT CUSTER
County of Fairfax, Virginia,

MICHAEL BATTLES
22 Ledyard Street
Newport, Rhode Island 02840,

JOSEPH MORRIS
96 Hattertown Road
Newtown, Connecticut 06470-2499,

MUHAMMED ISSAM ABU DARWISH
a citizen of Lebanon who resides in
Lebanon and Iraq,

and

MURTAZA LAKHANI
a citizen of Pakistan who resides
in Canada and Iraq,

Defendants.

AMENDED COMPLAINT

1. On behalf of the United States of America, Relators DRC, Inc. Robert J. Isakson and William D. Baldwin bring this action under the Civil False Claims Act, 31 U.S.C. § 3729 et seq. (the “FCA”), in order to recover damages and civil penalties from Defendants Custer Battles, LLC, Secure Global Distribution, Middle East Leasing, Laru, Ltd., Custer Battles Levant, Scott Custer, Michael Battles, Joseph Morris, Muhammed Issam Abu Darwish and Murtaza Lakhani, for their knowing submission of false payment claims to United States Government-funded entities involved in the reconstruction of Iraq, including

specifically the Coalition Provisional Authority of Iraq (the “CPA”), the Iraqi Currency Exchange (the “ICE”), and U.S. Army Corps of Engineers (“Corps”) and U.S. Agency for International Development (“USAID”) prime contractors Washington Group International, Inc. (“WGI”) (or a WGI affiliate known as “WII”) and Bearing Point, Inc. (“BPI”).

INTRODUCTION

2. This case concerns the Defendants’ war profiteering. As detailed below, upon information and belief, Defendant Custer Battles, LLC (“Custer Battles”), as a contractor with the CPA and others, and as a subcontractor under Corps and USAID contracts with WGI, BPI and others, submitted false and fraudulent payment claims for services and facilities relating to the operations and goals of the United States in Iraq. As described below, the Defendants’ war profiteering resulted in (*inter alia*) tens of millions of dollars of fraudulent damage to United States, and evidently has contributed to the deaths of at least four Custer Battles employees and the injury of other Custer Battles employees.

3. Under one or more of its CPA contracts, Custer Battles was entitled to bill on a cost plus negotiated-fee basis. In connection with these cost-plus contracts, Custer Battles, in cooperation with Defendants Secure Global Distribution, Middle East Leasing, Laru, Ltd., Custer Battles Levant, Scott Custer, Michael Battles, Joseph Morris, Muhammed Issam Abu Darwish and Murtaza Lakhani, knowingly, or with reckless disregard or deliberate ignorance, presented, or caused to be presented, invoices to the CPA that substantially and artificially inflated Custer Battles’ costs, and that claimed payment for services not actually performed

and for equipment not actually provided. For example, the “costs” that formed the basis for Custer Battles invoices to the CPA included artificial markups paid to shell entities owned or controlled by the Defendants, but which themselves provided no additional service or item. By conspiring to bill fictive costs generated by their shell entities, i.e., Defendants Secure Global Distribution, Middle East Leasing, Laru, Ltd., and billing services and items that Custer Battles never provided, these Defendants fraudulently increased profits to Custer Battles and the individual Defendants who owned, controlled or otherwise profited from Custer Battles and these shell entities.

4. Under two or more of its CPA, Corps and/or USAID contracts or subcontracts, Custer Battles was entitled to bill on a fixed-price basis. In connection with its fixed-price contracts, Custer Battles, in cooperation with other Defendants, knowingly, or with reckless disregard or deliberate ignorance, presented, or caused to be presented, proposals that falsely represented Custer Battles’ costs and profits and the reasonableness of its proposed prices, and invoices for services, personnel and items that Custer Battles failed to perform or provide. For example, exploiting the fact that contract and subcontract awards would be made on an exigent basis and with little or no competition, Custer Battles offered to perform a fixed-priced subcontract with WGI at substantially inflated prices, and yet it falsely represented to WGI and the United States that such prices, including its costs and resulting profit margin, were reasonable. Later, when the United States questioned Custer Battles’ representations, Custer Battles adamantly refused to reveal its actual costs on the grounds that the contract price was fixed.

5. Soon after he began his employment with Custer Battles in early August of 2003, Relator Baldwin began to develop concerns over the Defendants' business and billing practices. Mr. Baldwin reported his concerns to Defendants Scott Custer, Michael Battles and Joseph Morris. He was told to "stay out of the way." As he learned more, Mr. Baldwin repeatedly informed Defendants Scott Custer, Michael Battles and Joseph Morris of his concerns over what Mr. Baldwin eventually began to view as possibly fraudulent billing and business practices by the Defendants. Mr. Baldwin was threatened with termination. After the Defendants failed to take corrective action, Mr. Baldwin began to refuse to support Custer Battles' invoices. When he observed the Defendants blatantly mislead the ICE Supervising Board, Mr. Baldwin resigned from the Board and reported his concerns directly to the CPA and other U.S. Governmental authorities. Mr. Baldwin's efforts to investigate his concerns, his communication of his investigations and concerns to the Defendants, and ultimately his refusal to acquiesce as the Defendants overtly misled the United States about their fraudulent business practices and billing, led to Mr. Baldwin's termination or constructive discharge in early 2004.

6. Under the FCA, this Amended Complaint may be filed under seal, in which case it shall remain under seal for a period of at least sixty days, and not be served on the Defendants until the Court so orders. The Government may intervene and prosecute the action within sixty days after it receives the Amended Complaint and supporting evidence and information, or it may permit the Relators to prosecute the action in the name of the Government. The Relators have complied with these provisions of the FCA.

7. As required by FCA § 3730(b)(2), the Relators have provided to the Attorney General of the United States and the United States Attorney for the Eastern District of Virginia, before filing this Amended Complaint, a statement of material evidence and information in the Relators' possession. The disclosure statement supports the existence of additional false claims by the Defendants. The Relators are the "original source" of this information under the FCA.

JURISDICTION AND VENUE

8. This Court has exclusive jurisdiction over this action pursuant to FCA § 3729 (1994); FCA § 3730 (1994), including FCA §§ 3730(a) & 3730(b) (1994 & Supp. 2000); FCA § 3732(a) (Supp. 2000); 28 U.S.C. § 1331 (1994); and 28 U.S.C. § 1345.

9. Defendants Scott Custer and Custer Battles reside or transact business in this judicial District. Therefore, under 28 U.S.C. § 1391(b) and FCA § 3732(a), venue is proper in this District.

THE PARTIES

10. Relator DRC, Inc. ("DRC") is an Alabama corporation with its principal place of business in Mobile, Alabama. DRC's headquarters are located at 740 Museum Drive, Mobile, Alabama 36608. Relator Robert J. Isakson is an adult resident of Mobile, Alabama, and the Managing Director of DRC. Relator William Baldwin is an adult resident of Jacksonville, Florida.

11. Defendant Custer Battles is, upon information and belief, a Limited Liability Company registered in the State of Delaware with its principal place of business at 3959

Pender Drive, Suite 109, Fairfax, Virginia 22030.

12. Defendant Scott Custer is an adult whose residency is believed to be in the County of Fairfax, Commonwealth of Virginia. Mr. Custer is one of the two principals of Defendant Custer Battles, and he is believed to own approximately one-half of Custer Battles.

13. Defendant Michael Battles is an adult whose residency is believed to be at 22 Ledyard Street, Newport, Rhode Island 02840. Mr. Battles is one of the two principals of Defendant Custer Battles, and he is believed to own approximately one-half of Custer Battles.

14. Defendant Secure Global Distribution (“SGD”) is a company believed to be located in Lebanon, and at 4th Floor Zephyr House, 122 Mary Street, P.O. Box 709, Georgetown, Grand Cayman Island, Cayman Islands.

15. Defendant Middle East Leasing (“MEL”) is a company believed to be located at 4th Floor Zephyr House, 122 Mary Street, P.O. Box 709, Georgetown, Grand Cayman Island, Cayman Islands.

16. Defendant Custer Battles Levant is a company believed to be located at Solidere, Central District, Omar al Daouk Street, Khaled at Daouk Building, Second Floor, Beirut, Lebanon. Upon information and belief, Custer Battles has represented Custer Battles Levant to be Custer Battles office in Lebanon.

17. Defendant Laru, Ltd. (“Laru”) is a company believed to be located at P.O. Box 51263, 3503 Limassol, Cyprus, and with an office at Quart 601, Street 11.14.47, Al Mansoor Area, Baghdad, Iraq.

18. Defendant Joseph Morris is an adult whose residency is believed to be at 96

Hattertown Road, Newtown, Connecticut 06470-2499.

19. Defendant Muhammad Issam Abu Darwish is an individual, and a citizen of Lebanon who resides in Lebanon and Iraq. Mr. Darwish is believed to have participated in the formation of Custer Battles Levant.

20. Defendant Murtaza Lakhani is an adult citizen of Pakistan who resides in Canada and Iraq, and who owns or operates Laru.

FACTS

The United States-Funded Contracting Agencies

21. The Custer Battles contracts in issue in this case were funded, both directly and indirectly, by United States taxpayers and the U.S. Treasury.

22. Two or more of the Custer Battles contracts in issue in this case were funded, at least in part, by the U.S. Army Corps of Engineers or the U.S. Agency for International Development.

23. Two or more of the Custer Battles contracts in issue in this case were funded, at least in part, by the CPA, by the Development Fund of Iraq, and with seized funds with respect to which “all right, title and interest” previously had “vest[ed] in the United States Treasury.”

24. In the spring of 2003, General Tommy Franks declared the liberation of Iraq and announced the creation of the CPA. As recognized by United Nations Resolution 1483, the CPA existed pursuant to the mandate of the United States and the United States Armed Forces, in conjunction with the Government of the United Kingdom and other coalition forces, and with the support of the United Nations. The CPA administered the government

of Iraq, and was intended to do so until the people of Iraq adopted a new constitution and formed a new government. At first, General Franks headed the CPA, and all coalition forces in Iraq (such as the Office of Humanitarian Assistance and Reconstruction) reported to him. Thereafter, Ambassador Paul L. Bremer III, by appointment by President Bush, headed the CPA.

25. The United States funds the CPA and its operations. The CPA therefore is a contractor, grantee, or recipient of funds provided by the United States, and an agency or instrumentality of the United States.

26. On or about July 29, 2003, the Director of the Office of Management and Budget, Joshua Bolton, testified before the Senate Foreign Relations Committee. Mr. Bolton's prepared testimony states that, as of June 30, 2003, "the U.S. Government has allocated slightly more than \$2.7 billion" to fund Iraq relief and reconstruction. "Of \$2.7 billion, approximately \$750 million came from seized and vested Iraqi state assets; the remainder from funds appropriated by Congress." Mr. Bolton's testimony specified that "approximately \$600 million was provided from [Department of Defense] accounts to support CPA operations."

27. Public Law 108-106, enacted on November 6, 2003, includes an appropriation of \$933 million "[f]or necessary expenses of the [CPA] in Iraq for personnel costs, transportation, supply, equipment, facilities, communications, logistics requirements, studies, physical security, media support, promulgation and enforcement of regulations, and other activities needed to oversee and manage the relief and reconstruction of Iraq and the transition to democracy." It explains that this \$933 million to the CPA "shall not be construed to limit or otherwise affect the ability of the Department of Defense to furnish

assistance and services, and any other support, to the Coalition Provisional Authority.”

28. The Development Fund for Iraq (“DFI”), established by paragraph twelve of United Nations Resolution 1483, also funds the CPA. Upon information and belief, the United States contributes funds to the DFI. For example, the United States contributes “confiscated” Iraqi assets to the DFI. These confiscated assets are the property of the United States, with “all right, title, and interest” in such property having “vest[ed] in the United States Treasury” by statute and Executive Order. In addition, by Executive Order, such “vested property” explicitly was ordered “transferred to the Development Fund of Iraq” to “assist in the reconstruction of Iraq.” One or more of the contracts in issue in this case were funded, at least in part, with these DFI funds.

29. In addition, by depleting DFI funds through their false and inflated payment claims, the Defendants reduced the availability of DFI funds to meet United States reconstruction goals in Iraq, and concomitantly increased the need for appropriated funds to meet such goals. The Defendants’ false and inflated payment claims reduced the overall quantum of resources and funds available to the United States to meet the United States’ operations, commitments and goals in Iraq. As a result, funds (whether confiscated, seized, appropriated or otherwise) that should have been available to serve United States operations, commitments, interests and goals in Iraq now are unavailable to the United States.

30. By their schemes and false billing, the Defendants impaired the integrity of the procurement process.

31. The Defendants’ schemes and false billing has had, and may have, a financial impact upon the United States.

The BIAP Contract

32. In or around June of 2003, Defendant Custer Battles began to attempt to obtain contracts to provide security services, facilities, housing, and related items and services to the CPA and the United States in Iraq.

33. In June of 2003, Relator Isakson was introduced to Defendant Mike Battles. Messrs. Isakson and Battles agreed that their two companies, i.e., DRC and Custer Battles, respectively, would work together to obtain and perform security contracts in Iraq. Later, Mr. Isakson also spoke with Defendant Scott Custer about the nature of the proposed business relationship between DRC and Custer Battles.

34. On or about June 24, 2003, Scott Custer and Custer Battles submitted a fixed-price proposal to the CPA to provide security services, housing facilities, and related services and facilities to the Baghdad International Airport (“BIAP”). In its proposal, Custer Battles represented that Custer Battles would provide over 138 security and related personnel, and related services and equipment. For example, Custer Battles represented that it would provide fifty “Guard[s]”; an initial screening force of thirteen Transportation Safety Administration (“TSA”) - approved screeners (including a Director of screening); and all required weapons, equipment and vehicles.

35. Custer Battles initially offered to provides these services and items for \$13,640,832. Custer Battles’ proposed BIAP contract price later rose to approximately \$16,500,000, which Custer Battles represented to be a reasonable price given Custer Battles’ costs and entitlement to a fair profit.

36. Soon thereafter in June of 2003, Custer Battles was awarded the BIAP contract. Relator Isakson traveled to Baghdad in order to fulfill DRC’s responsibilities under a

subcontract with Custer Battles under Custer Battles' BIAP contract.

37. During the period of approximately July 2, 2003 through July 30, 2003, Mr. Isakson remained in Baghdad to assist DRC to perform under its BIAP subcontract. During this period, Mr. Isakson worked closely with Custer Battles and its personnel.

38. As noted, upon information and belief, the BIAP contract award price was a lump-sum of approximately \$16,500,000. Approximately several million dollars of this BIAP contract price was paid up-front to Custer Battles. As noted, under its BIAP contract, Custer Battles was to provide over 130 security personnel. This security included armed security at the main BIAP gate for civilian traffic (referred to as "Checkpoint One"); armed security around the perimeter of the BIAP terminal (which consisted of several checkpoints and roving security guards); armed security at the BIAP terminal entrances and passenger check-ins; and the TSA-approved passenger and baggage screeners.

39. At the time of the award of the BIAP contract in late June of 2003, BIAP was scheduled to be fully operational by July 10, 2004. On July 10, 2004, and for a period of time thereafter, BIAP remained only partially operational, with only a few flights per day. These few flights typically consisted of smaller planes, mostly associated with Non-Governmental Organizations.

40. Custer Battles exploited the diminished or delayed BIAP operations by discharging or reassigning a substantial portion of its BIAP contract security personnel, and yet continuing to submit monthly invoices at the original BIAP contract price. For example, upon information and belief, BIAP contract Force Protection Officers and Gurkhas worked on other billable Custer Battles projects. In addition, Custer Battles released McNeil Technologies, Inc., its BIAP subcontractor for TSA-approved screeners through which

Custer Battles ostensibly provided an additional 10-15 trained and TSA-approved screening personnel.

41. Custer Battles' representations in its proposal, i.e., that it would provide a fixed number of security personnel at the proposed BIAP contract price, were false. Custer Battles intentionally declined to provide the promised (and required) number of BIAP contract security personnel. Custer Battles' BIAP contract monthly invoices, including specifically its invoices for the months of July through September of 2003 (and additional months thereafter), predicated on the provision of a promised number of BIAP security personnel that Custer Battles intentionally declined to provide, were false.

The ICE Contract

42. Under its authority to provide for economic stability and growth in Iraq, the CPA created the ICE (which also is referred to as the "MX" program). The purpose of the ICE was to implement the creation of a new Iraqi currency. Specifically, the ICE was formed to exist for the three-month period of October 15, 2003 to January 15, 2004. During this period of time, the ICE provided "new Iraqi dinars" in exchange for "old Iraqi dinars," thereby replacing the old currency (which depicted Saddam Hussein on its bank notes) with the new currency (which lacked any picture of Saddam Hussein, and which is modeled after the currency used in Iraq before Saddam Hussein came to power). In addition, the ICE provided new Iraqi dinars to anyone providing Swiss dinars, which until recently had been used as currency in northern Iraq.

43. Until recently, and during the period of time that Custer Battles was presenting invoices in connection with its ICE contracts (discussed below), the ICE was chaired by General Hugh Tant, a retired general of the U.S. Department of the Army.

44. On two different occasions during July of 2003, Defendants working with Custer Battles described to Relator Isakson a plan to utilize companies owned or controlled by Custer Battles artificially to inflate the costs to be billed to the CPA under any cost-plus contract with the CPA.

45. One of these conversations was with Defendant Murtaza Lakhani, who was assisting Custer Battles in Iraq. In discussing with Mr. Isakson the possibility of bidding for additional contracts with the CPA, Mr. Lakhani suggested that Custer Battles create shell companies in other countries, through which the items required under the CPA contracts could be billed, in order to inflate costs and create a mark-up in excess of that normally permitted under a cost-plus contract. Mr. Isakson immediately told Defendant Lakhani that this would be illegal, and that neither he nor DRC would be associated with it. As detailed below, Mr. Lakhani and Custer Battles ignored Mr. Isakson's advice.

46. Shortly after this conversation with Mr. Lakhani, Mr. Isakson had a similar conversation with Defendant Joseph Morris, who had been hired by Custer Battles to serve as a Custer Battles project manager in Iraq. Defendant Morris, like Defendant Lakhani, stated that he believed they could substantially increase profits through the use of shell leasing companies, owned or controlled by Custer Battles, serving as intermediaries between the actual suppliers and Custer Battles, so as to create the appearance of additional costs and a concomitantly greater overhead and profit. Mr. Isakson told Defendant Morris that this would be illegal, and that neither Mr. Isakson nor DRC would be associated with it. Like Defendant Lakhani, Defendant Morris ignored Mr. Isakson's admonition.

47. After these conversations with Custer Battles' personnel in Iraq, Mr. Isakson spoke directly with Defendant Scott Custer. Defendant Custer, too, brought up and

specifically discussed the possibility of utilizing shell companies as intermediaries in order to increase the profitability of Custer Battles' cost-plus-negotiated-fee contracts in Iraq. Once again, Mr. Isakson stated his view that such an arrangement would be illegal, and that he and DRC had no interest in it. Once again, Relator Isakson's advice was not heeded.

48. Towards the end of June of 2003, Relator Baldwin arrived in Iraq to assist in the work being performed under the BIAP contract. Relator Baldwin was recruited to come to Iraq by Relator Isakson, who had employed Mr. Baldwin to perform similar work in the past.

49. After Mr. Baldwin arrived in Iraq, Custer Battles sought to terminate its relationship with DRC and Relator Isakson. Custer Battles elected to do so by holding Relator Isakson (and his young son) captive at gun-point, disarming Mr. Isakson, and then sending Mr. Isakson and his son sans weapons or escort on a dangerous journey over land to Amman, Jordan. Relator Isakson and his son survived their forced journey to Amman, Jordan, and from there they returned to the United States.

50. After Mr. Isakson's departure from Iraq, Custer Battles entered into CPA/ICE Contract No. DABV01-03-C-0013 (which thereafter was extended by modification), to provide security, facilities, and transport required to support the ICE's exchange and transportation of currency. The ICE contract Contracting Officer was Colonel Bell, a commissioned officer in the United States Army.

51. Under its contract with the ICE, Custer Battles was required: (1) to provide security guards for the ICE; (2) to provide, construct, and operate three camps for the security personnel and other personnel working for the ICE; (3) to provide trucks and other vehicles to enable the ICE to transport currency; and (4) to provide heavy equipment to

enable the ICE to move, store and transport currency.

52. Upon information and belief, each of these four Custer Battles ICE contract requirements was billed on a cost plus fixed-fee basis. Therefore, upon information and belief, the ICE contract provided for Custer Battles to be paid on a cost plus fixed-fee basis for the provision of the cabins used to construct the ICE camp, the trucks used for transport of ICE currency, and the equipment used for the storage and movement of ICE currency, as well as for associated facilities and services provided in connection with these components. (Collectively, these three components of the ICE contract are referred to below as the “facilities components.”)

53. Upon information and belief, Custer Battles knowingly, or with reckless disregard or deliberate ignorance, submitted false claims for payment to the CPA with respect to the facilities components.

54. Custer Battles used three intermediary companies to inflate the costs associated with each of the facilities components provided under the ICE contract. Upon information and belief, these three companies are Defendants SGD, MEL and Laru.

55. Custer Battles, and upon information and belief Defendant Darwish, control and own either all of the stock or a majority of the stock of Defendant SGD.¹ Custer Battles controls or owns all of the stock or a majority of the stock of Defendant MEL. Upon information and belief, Defendants Custer Battles and Lakhani control or own Defendant Laru. As described below, upon information and belief, SGD and MEL provided no service

¹ Upon information and belief, Defendant Darwish recently was discovered on a plane, leased by Custer Battles, with U.S. \$12 million in Iraqi dinars. The cash was confiscated by customs in Lebanon, where Mr. Darwish resides.

or products in connection with Custer Battles' ICE contract, and Laru billed for services and products that it did not provide..

56. Under the ICE contract, Custer Battles is entitled to a fee in the amount of approximately 25% over its costs.

57. Through the use of their intermediary shell companies, Defendants SGD, MEL and Laru, Custer Battles and the individual Defendants artificially inflated Custer Battles' fee to 60%, or more, over its actual costs incurred to provide the facilities components under the ICE contract.

58. Specifically, in the fall of 2003, Custer Battles began ordering the ICE contract facilities components. Initially, Custer Battles placed an order in its own name to the supplier of the components. Custer Battles then issued a Purchase Order not in its own name, but rather in the name of one of its shell intermediaries SGD or MEL.

59. Custer Battles used SGD and MEL to "lease" the items to Custer Battles at an amount far greater than the price actually charged by the third-party supplier. Custer Battles then invoiced this artificially inflated amount as its supposed actual cost under its cost-plus contract with the CPA, thereby allowing Custer Battles fraudulently to receive an artificial "double mark-up" over the true cost it bore to obtain the ICE contract facilities components.

60. Upon information and belief, the Defendants' scheme was accomplished in the following manner, with respect to some of the many specific examples of the ICE contract facilities components:

(a) Custer Battles ordered between 65 and 100 cabins to provide the camp required under its ICE contract. It placed the order with a company operating out of Saudi Arabia named Red Sea Housing Services, Ltd. ("Red Sea"). Defendant SGD, and not Custer

Battles, issued the Purchase Order to Red Sea. Separately, Custer Battles (or Defendant Custer Battles Levant) wired a portion of the purchase price for these cabins directly, in its own name and from its own account, to Red Sea. Custer Battles then billed the cabins to the CPA and ICE at an inflated cost, under a fictive (and indeed at the time non-existent) “lease” with its undisclosed shell intermediary MEL. Later, when the ICE questioned the high “lease” costs, Custer Battles arranged to prepare a lease after-the-fact, in a further fraudulent attempt to convince the ICE that the transaction was arms-length and legitimate.

(b) Custer Battles repeated the forgoing arrangement with respect to a second Purchase Order for 30-35 additional cabins from Red Sea, again using Defendant MEL as an intermediary to create inflated costs under a non-existent lease with this shell intermediary owned or controlled by the Defendants.

(c) Custer Battles also arranged for certain vehicles, numbering approximately 40 heavy trucks and sport utility vehicles, to be purchased through Defendant SGD in the same manner, allowing for a double mark-up and concomitant excess profits.

(d) Custer Battles arranged for certain heavy equipment, used for lifting, transporting, and storing currency controlled by the ICE, to be purchased ostensibly through MEL, in the same manner as described above, allowing for a double mark-up and excess profits.

61. In addition, although it has billed 100% of the fictive lease costs of the items acquired from the Red Sea, Custer Battles (through SGD and Defendant Darwish) has paid only approximately 20% of the actual cost charged by Red Sea, thereby further inflating its profits.

62. In October and November of 2003, the CPA and its ICE Supervising Board

began to question Custer Battles' ICE contract invoices. On or about November 6, 2003, Relator Baldwin informed Defendants Custer, Battles, Morris and Darwish that they must produce signed leases to the CPA.

63. The non-existent "leases" between Defendant Custer Battles and Defendants SGD and MEL finally were created and executed through Defendants Custer, Morris and Darwish, and submitted as the backup for the previously and later submitted SGD and MEL lease invoices. These leases were back dated to (on or about) September 17, 2003, when the camps were completed and occupied by ICE employees, but such leases never existed prior to November of 2003.

64. Upon information and belief, the signatures for MEL were those of a new Custer Battles Iraqi employee, Mr. Ihab Bashier, who was ordered to sign the lease but warned that he was not to read the documents as he was ineligible to do so. Upon information and belief, the signature of the SGD leases were forged in the name of a Custer Battles employee, i.e., Georges Boustany.

65. Defendants Custer Battles and Scott Custer knew, or recklessly disregarded or deliberately ignored the fact, that Custer Battles was engaging in the above-described scheme to utilize intermediary companies to artificially inflate costs and profits under the ICE contract.

66. In addition to Mr. Custer, other individuals working with Custer Battles, including Defendants Morris, Lakhani and Darwish, knew, recklessly disregarded, or deliberately ignored the fact that Custer Battles was engaged in the above-described scheme to use intermediary companies to report inflated costs and obtain profit mark-ups substantially in excess of those permitted under the ICE contract. Custer Battles also may

have formed a subsidiary named “Custer Battles Levant,” designed specifically to implement (i.e., to make payments to SGD and MEL) the foregoing scheme for Custer Battles and the other Defendants in Iraq.

67. As noted above, the CPA Contracting Officer for the Custer Battles contract is believed to be an officer or employee of the United States Army, i.e., Colonel Bell. Custer Battles is believed to have submitted its inflated ICE contract invoices to Colonel Bell, or to ICE Chairman General Tant.

68. As set forth above, the CPA currently is fulfilling the mandate of the United States and the United States Armed Forces in Iraq; it is funded in part with assets, money, and other assistance contributed by the United States and the United States Armed Forces; and the CPA’s contracts with Custer Battles are administered by a commissioned officer in the United States Army. Therefore, Custer Battles’ submission of invoices or payment claims under its ICE contract constitute the submission of claims to the United States Government, or to an officer or employee of the United States Government.

69. All of the claims for payment submitted by Custer Battles, or caused to be submitted by Custer Battles, seeking payment from the CPA for the facilities components on the ICE contract were false. These claims include, but are not limited to, Custer Battles’ October 23, 2003 invoice no. CBI-013 (for \$7,929,612.19, less a \$4,000,000 “Prior Payment,” leaving a balance of due of \$3,929,612.19); November 8, 2003 invoice no. CBI-017; and December 19, 2003 invoice no. CBI-0120. All of these claims were false, because they claimed entitlement to payments substantially in excess of the amount to which Custer Battles was entitled under its ICE contract.

70. Upon information and belief, under its ICE contract, Custer Battles also billed

substantial sums for services and equipment that it either did not provide or did not own. For example, Custer Battles arranged for certain heavy equipment, such as forklifts used for moving and warehousing the Iraqi currency, to be shown as being leased through SGD or MEL, in a manner similar to that described above, again for the purpose of fabricating a double mark-up and excessive profits.

71. At least one of the forklifts, and perhaps as many as six to eight forklifts, shown as being leased from MEL and/or SGD for thousands of dollars per month per forklift, actually belong to Iraqi Airways. Custer Battles ordered its employees to confiscate the forklifts, which Iraqi Airways was forced to abandon during the war. Custer Battles had the forklifts painted another color to cover the Iraqi Airways stickers on the machines.

72. These forklifts then were delivered to the ICE facilities, and MEL and/or SGD generated a lease to Custer Battles for the forklifts.

73. The Defendants also used Laru to generate fictive invoices to Custer Battles, which then invoiced the CPA for these non-existent “costs” and associated “profit.” Defendant Lakhani controlled or owned the stock, or a controlling share of the stock, of a company called “Laru, Ltd.” (“Laru”). Upon information and belief, Mr. Custer individually, or Custer Battles as a corporation, also acquired a forty (40%) percent ownership of Defendant Laru. Upon information and belief, Laru billed to Custer Battles, for Custer Battles’ subsequent billing to the CPA or ICE, work that Laru did not actually provide. Defendant Joseph Morris signed such false Laru invoices with actual knowledge that such work and items were not provided, thereby authorizing the billing of these additional fictive “costs.”

74. For example, in a December 1, 2003 invoice, Laru purported to charge Custer

Battles \$157,000 for a Helicopter Pad in Mosul. This Laru invoice was one of three Laru invoices, totaling \$524,700, which were attached to Custer Battles' ICE contract invoice Number CBI-0120 dated December 19, 2003. The Helicopter Pad invoice from Laru was false, because this work was performed by GK & Co. (of Beirut, Lebanon) directly for Custer Battles at a cost of approximately \$95,000, and paid directly by Custer Battles to GK & Co., and not Laru. Interestingly, the \$157,000 billed by Laru came close to "maxing out" out the pertinent \$175,000 line item in a Custer Battles' ICE contract modification dated October 23, 2003.

75. A second Laru invoice, dated December 10, 2003 in the amount of \$257,700, was attached to the same Custer Battles invoice to the CPA. This Laru invoice included three dining hall expansions for \$21,000, \$27,000 and \$27,000 that did not occur; and internet connection charges of \$57,000, \$62,000 and \$63,700, when such connections would have been performed at a cost of approximately \$8,000.

76. The same day, Relator Baldwin reported by email to the officers, owners and Directors of Custer Battles that he viewed the first Laru invoice to be "false, fabricated, inflated and equal [to] fraud." Relator Baldwin refused to sign the invoices. In response, Defendant Darwish threatened Mr. Baldwin's job. Relator Baldwin therefore signed the invoices, but only after carefully noting retainages corresponding to the questionable charges directly on the invoices.

77. As he learned more about his new employer Custer Battles, Relator Baldwin again alerted Defendants Custer, Battles, Morris and Darwish to his concerns over the propriety and legality of the business practices and billing described above. For example, Mr. Baldwin objected to any association with Defendants Laru and Lakhani, and clearly

communicated his views on the questionable propriety of their conduct. In response, Defendant Custer ordered Mr. Baldwin to “stay out of the way of Laru.” As discussed below, the Defendants continued to ignore Mr. Baldwin’s admonitions, and ultimately retaliated against Mr. Baldwin for his efforts to investigate, correct and report the Defendants’ schemes. Hence, the Defendants possessed actual knowledge of their fraudulent schemes as they were implementing and exploiting them, and they also endorsed, encouraged or directed the implementation of this scheme. The Defendants knew, or recklessly disregarded or deliberately ignored the fact, that Custer Battles’ ICE contract invoices were false or fraudulent.

78. The United States has contributed, and it continues to contribute, substantial sums to the CPA, in the form of both direct appropriations and indirect assistance. The false or fraudulent claims submitted to the CPA by or on behalf of Custer Battles have financially impacted the United States.

The Washington Group and Bearing Point Subcontracts

79. Under a subcontract with WGI, Custer Battles was required to provide security in support of WGI’s prime contract with the U.S. Army Corps of Engineers relating to the reconstruction of power lines in northern Iraq. Under its subcontract with BPI, Custer Battles was required to provide housing, life support and security services in support of BPI’s consulting and management services to the CPA, the U.S. Agency for International Development and others in Iraq.

80. In its proposals for WGI and BPI subcontracts, Custer Battles represented that its proposed subcontract prices were reasonable in light of its costs and entitlement to a reasonable profit. For example, in or about August of 2003, Custer Battles engaged in

negotiations with WGI and the Corps to obtain the security services subcontract under WGI's prime contract with the Corps. At the time, many security contracts in Iraq were being awarded on an exigent basis and with limited or no competition. Custer Battles exploited the exigencies of WGI's and the Corps need for security services to protect its workers in northern Iraq. Custer Battles did so by substantially overstating its anticipated costs and understating its anticipated profit margin in its proposal and negotiations to obtain the WGI subcontract. By such misrepresentations, Custer Battles induced WGI and the U.S. Corps of Engineers to believe that Custer Battles' proposed price was reasonable, and therefore to award a subcontract to Custer Battles.

81. The WGI subcontract was awarded to Custer Battles with little or no significant competition. The price of Custer Battles' subcontract with WGI, after modifications, amounted to approximately \$12,000,000.

82. Having induced the award of its subcontract WGI with materially false representations, Custer Battles then exploited the inflated WGI subcontract price. For example, Custer Battles simply subcontracted most of its work under its WGI subcontract to a company named Falcon Security. The price of Custer Battles' subcontract with Falcon Security was approximately \$4,100,000, leaving Custer Battles with an exorbitant profit, unforeseen by WGI or the Corps, of nearly \$8,000,000. When WGI and the Corps became suspicious about Custer Battles' earlier cost, profit and price reasonableness representations, they asked Custer Battles to reveal its costs. Upon information and belief, Custer Battles refused to do so, and it has refused to refund any of the WGI subcontract price paid to Custer Battles.

Additional Facts Concerning Custer Battles' Retaliation Against Relator Baldwin

83. In late July or August of 2003, Custer Battles offered, and Relator Baldwin accepted, the position of Country Manager with Custer Battles. Mr. Baldwin returned to Iraq as a Custer Battles Senior Manager in early to mid-August of 2003. Soon after he began his work for Custer Battles in Iraq, Relator Baldwin began to develop reservations about the integrity of Custer Battles' business operations and billing.

84. As he learned more about Custer Battles, Mr. Baldwin began to suspect that Custer Battles was engaged in the scheme described above, i.e., the use of shell-companies to inflate costs and defraud the United States. Mr. Baldwin repeatedly raised his concerns with the principals of Custer Battles. He did so through direct and private meetings with Defendants Custer, Battles, Morris and Darwish, as well as through repeated overseas calls to Defendant Custer and others.

85. In October of 2003, Defendants Custer and Battles appeared before the ICE Supervising Board, of which Relator Baldwin was a member. The ICE Board indicated concern over Custer Battles' ICE contract invoices, and it asked Messrs. Custer and Battles for the SGD and MEL leases, and related documentation of Custer Battles' claimed costs. Messrs. Custer and Battles told the ICE Board that such documentation was unavailable, because these leasing companies supposedly would not provide it. Defendants Custer and Battles withheld from the ICE Board the fact that they, along with other Defendants, owned or controlled these so-called leasing companies. Defendant Morris had previously made such statements to the ICE Supervising Board, knowing that they were false.

86. In October of 2003, Relator Baldwin strongly objected to the Defendants' representations in a face-to-face meeting with Defendant Custer. Defendant Custer and the

other Defendants refused to clarify the record before the CPA and the ICE Board, refused to take corrective action, and warned Mr. Baldwin to refrain from any further interference in their dubious business practices.

87. Having observed the Defendants deliberately withhold the truth from the CPA and the ICE Board, and then realizing that the Defendants intended to continue to do so, Mr. Baldwin again informed Defendants Custer and Battles of his concern that the Defendants were engaged in an unlawful scheme. The Defendants again refused to discontinue their scheme. As a direct result, Mr. Baldwin resigned from the ICE Board.

88. At the risk of being terminated, Relator Baldwin reported to BPI's John Duffy, who was the manager of the ICE program, that he no longer was comfortable representing Custer Battles and its representations before the CPA. Mr. Baldwin expressed similar concerns to John Rooney, an ICE project director under General Tant. (In mid-January of 2004, after making the decision to further detail Custer Battles' schemes, Relator Baldwin again approached Mr. Dully, who directed him to investigators.)

89. By late December of 2003, Relator Baldwin's work environment with Custer Battles and the other Defendants became intolerable. The Relator was aware of business practices by the Defendants that appeared fraudulent. The Relator's efforts to investigate the Defendants' scheme were known to the Defendants. The Defendants repeatedly had threatened Relator Baldwin for his efforts to investigate, and to cause the Defendants to take remedial and corrective action. These increasingly intolerable conditions forced Mr. Baldwin to submit a 60-day notice of his resignation from his employment with Custer Battles. By letter dated February 20, 2004, Custer Battles, through counsel, purported to terminate Mr. Baldwin effective March 7, 2004.

COUNT ONE
FCA § 3729(a)(1)

90. Plaintiffs re-allege and incorporate the foregoing allegations herein.

91. The BIAP contract proposal contained materially false representation, as detailed above. In addition, the specific claims for payment presented, or caused to be presented, by Custer Battles to the CPA, seeking payments under the BIAP and ICE contracts, were claims within the meaning of FCA 3729(a)(1), because they were demands for payment made to a contractor, grantee, or other recipient of United States Government funding. For the reasons described above, the claims were false.

92. The proposal and the claims presented, or caused to be presented, by Custer Battles and the other Defendants to the CPA for payment under the BIAP and the ICE contracts sought payment of money, some substantial portion of which was provided by the United States Government.

93. Defendants, including but not limited to Custer Battles as a corporation, and Scott Custer, Michael Battles and Joseph Morris, knowingly, or with reckless disregard or deliberate ignorance, presented, or caused to be presented, to the CPA and to the CPA's contracting officer, who is an officer or employee of the United States Government, false or fraudulent claims for payment.

94. Defendants are liable under FCA §§ 3729(a)(1) and 3730 for: (a) civil penalties in the maximum amount of Eleven Thousand Dollars (\$11,000) for each of these claims, plus (b) three times the amount of damages that the Government has sustained as a result of the Defendant's false claims, plus (c) reasonable attorneys' fees and other expenses and costs.

COUNT TWO
FCA § 3729(a)(2)

95. Plaintiffs re-allege and incorporate the foregoing allegations herein.

96. The Defendants, including but not limited Custer Battles as a corporation, and Scott Custer and Joseph Morris, knowingly, or with reckless disregard or deliberate ignorance, made or caused to be made false records in the form of altered Purchase Orders or invoices, receipts, wire transfer reports, or the like, in an effort to ensure that the false claims for payment submitted to the CPA for the facilities components of the ICE contract would be paid.

97. The Defendants are liable under FCA §§ 3729(a)(2) and 3730 for: (a) civil penalties in the maximum amount of Eleven Thousand Dollars (\$11,000) for each of these claims, plus (b) three times the amount of damages that the Government has sustained as a result of the Defendants' false claims, plus (c) reasonable attorneys' fees and other expenses and costs.

COUNT THREE
FCA § 3729(a)(3)

98. Plaintiffs re-allege and incorporate the foregoing allegations herein.

99. As alleged above, the Defendants, including Custer Battles as a corporation, Secure Global Distribution, Middle East Leasing, Laru, Ltd., Custer Battles Levant, and Scott Custer, Michael Battles, Joseph Morris, Murtaza Lakhani and Muhammad Issam Abu Darwish, all were directly involved in the scheme to use intermediary shell companies to obtain excess profit mark-ups on the cost-plus items in the ICE contract, and to bill for items and services that they did not provide.

100. Accordingly, the Defendants all conspired to defraud the United States Government by getting false or fraudulent claims paid.

101. The Defendants therefore are liable under FCA §§ 3729(a)(3) and 3730 for: (a) civil penalties in the maximum amount of Eleven Thousand Dollars (\$11,000) for each of these claims, plus (b) three times the amount of damages that the Government has sustained as a result of the Defendant's false claims, plus (c) reasonable attorneys' fees and other expenses and costs.

COUNT FOUR
FCA § 3730(h)

102. Plaintiffs re-allege and incorporate the foregoing allegations herein.

103. As noted, Relator Baldwin was employed by Defendant Custer Battles. Relator Baldwin's efforts to investigate the Defendants' fraud, leading ultimately to his resignation from the ICE Supervising Board and his reporting of the Defendants' fraud to the ICE project manager and the Government, were lawful and in furtherance of this action under the FCA. The Defendants intentionally and maliciously caused the resignation or discharge of the Relator from his employment with Defendant Custer Battles. In doing so, the Defendants were motivated by their concern over Relator Baldwin's discovery and investigation of the Defendants' fraud, and their desire to punish the Relator for lawfully pursuing his investigation and this action. The Defendants' constructive discharge or termination of Relator Baldwin, and their malicious retaliation against the Relator, have damaged Relator Baldwin.

104. Defendant Custer Battles is liable under 31 U.S.C. § 3730(h) for all relief necessary to make Relator Baldwin whole, including without limitation double back pay,

front pay, interest on back pay, and special damages.

JURY DEMAND

Relator demands a trial by jury on all issues so triable.

Respectfully submitted,

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Certificate of Service

I certify that, this 26th day of August 2004, a copy of the foregoing Amended Complaint (filed under seal and *in camera*) was served by first-class U.S. Mail, postage-prepaid, upon:

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