

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division**

RONALD P. YOUNG, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 1:13-CV-00585 GBL/JFA
	)	
CHS MIDDLE EAST, LLC,	)	
	)	
Defendant.	)	
	)	

**PLAINTIFFS RONALD YOUNG AND RAMONA YOUNG’S OPPOSITION TO  
DEFENDANT CHS MIDDLE EAST, LLC’S MOTION FOR SUMMARY JUDGMENT**

Plaintiffs Ronald and Ramona Young, by and through counsel, hereby file this Opposition to Defendant CHS Middle East, LLC’s Motion for Summary Judgment (Dkt. No. 53) filed with this Court on December 11, 2015. The Youngs have sufficient evidence in support of their claims that they engaged in protected activity under the False Claims Act and CHS retaliated against them for their protected activity. The Youngs engaged in protected activity by complaining to CHS that CHS was defrauding the government, it was not following the government’s mandate, and it was engaging in illegal practices because CHS used expired medications; had improperly trained staff, inadequate staff, inadequate facilities; and lacked protocols and guidelines. Shortly after engaging in their protected activity, CHS retaliated against the Youngs by terminating their employment.

**I. FACTUAL BACKGROUND**

CHS has a contract with the U.S. Department of State “to provide for Health Service Support to U.S. personnel and authorized foreign nationals serving for the United States in Iraq.” Ex. 1, CHS Contract at 9. Under the contract, CHS provides “pricing for all labor categories,

NTE Travel, Other Direct Costs (ODC), General and Administrative (G&A) Costs.” *Id.* at 8.

The maximum payment allowed is \$1 billion over the five years of the contract. *Id.* The

contract outlines how CHS can submit invoices for payment to the government. *Id.* at 27.

Among other documents, CHS was required to submit a “completed section K” dealing with

representations and certifications. *Id.* at 85. The “Purpose and Objectives” section of the

contract states:

[CHS] will provide **trained and certified health care professionals** and administrative service support to U.S. and U.S. sponsored beneficiaries working and residing in Iraq. [CHS] will staff, operate, equip, and supply health care facilities in locations prescribed by the Department of State to meet operational requirements as identified in this Performance Work Statement. Mission capable status (all sites listed in table C.1) is **1 December 2011**. Mission capable means **able to perform all requirements under this PWS**.

Ex. 1, CHS Contract at 9 (emphasis added). The contract also requires that CHS establish

“seven Health Units (HU), one large Diplomatic Support Hospital (DSH), and three small DSHs that provide patient care.” *Id.* at 9-10. The DSH site was at Sather in Baghdad. *Id.*

In terms of care, the contract required, *inter alia*, that Sather:

- “provide on-site primary, urgent and initial emergency care...triage, stabilize and evacuate patients to the next level of medical care.”
- “establish a medical/trauma care hospital with the following capabilities: basic x-ray, diagnostic ultrasound...”
- “have...staffing that reflects the requirements to manage two surgical patients and the possibility of multiple injured or ill patients, staffing to include competency in performing and interpreting ECG stress tests”
- “possess a total of 2 OR tables with anesthesia and supplies”
- “post operative / intensive care capabilities for up to six patients to be stabilized until medically evacuated.”

*Id.* at 10-11. If CHS was unable to return a patient to their quarters after 96 hours at Sather, that patient was to be “medically evacuated for onward treatment and medical care.” *Id.* at 12. The

Sather facility was also required to have “emergency and routine dental services...within the scope of practice of general dentistry to all eligible patients.” Ex. 1, CHS Contract at 13. CHS was required to ensure that they “only use US FDA or European Medicines Agency” medication. *Id.* at 14.

Under the staffing section, CHS was required to “[e]nsure that the HCPs [health care providers] are properly trained and certified prior to arrival in theater and that they stay proficient while providing health care.” *Id.* at 17. The contract required, *inter alia*, a general anesthesiologist, a general radiologist and a dentist. *Id.* at 18-19, 81-82. The contract also required emergency medical technicians (EMTs), registered nurses and vocational nurses “that do not exceed the scope of practice.” *Id.* at 18. In disciplining employees, CHS was required to “notify the COR of proposed disciplinary actions 24 hours in advance.” Ex. 1, CHS Contract at 40.

Mr. Young has been a registered nurse for sixteen years. Ex. 2, Plaintiffs Responses to Defendant’s First Interrogatories (“IROGs”) at 2-5. On June 29, 2011, Mr. Young signed a Foreign Service Employment Agreement with CHS. Ex. 3 at 1-10. On July 19, 2011, Mr. Young started working for CHS as a Medical Registered Nurse. Ex. 4, CHS Personnel Action Form. His supervisor was Casper Jones. *Id.* When Mr. Young first started at CHS, he reported to Cape Canaveral, Florida for “basic indoctrinated, security clearance and training.” Ex. 5, Ronald Young Dep. (“Ro. Dep.”)at 14:5-12.

Starting in September 2011, CHS stationed Mr. Young at Shield Forward Operating Base in Iraq. *Id.*at 14:14-22. At Shield, Mr. Young worked with Ken Jones and Brian Trillegi to set-up CHS’s first Health Unit (“HU”). Ex. 6, Sept. 16, 2011, Latest CHS News. While stationed at Shield, Shield received expired medications and Mr. Young was instructed to stock and use the

expired medications. Ex. 5, Ro. Dep. at 71:1-10. Tom Nagle even sent out an e-mail to all of the CHS facilities in Iraq instructing CHS employees to use the expired medications. *Id.*; Ex. 12, Caroline Merkel Decl. at ¶ 15. Mr. Young complained to Ken Jones and Eric Wiltz about the use of expired medication. Ex. 5, Ro. Dep. at 74:9-18. Casper Jones was aware of Mr. Young's complaints. Ex. 7 Casper Jones Dep. ("Jones Dep.") at 68:19-69:11. While stationed at Shield, Mr. Young asked Len Starbeck (RN) and Dana Bratcher Anderson (OR Nurse) about the lack of nursing Standard Operating Procedures (SOPs) and protocols. Ex. 8, Dec. 2011 Nursing Protocols – SOP Emails; Ex. 5, Ro. Dep. at 179:8-17. Mr. Starbeck and Ms. Anderson informed Mr. Young that they were working on them, and should be out by November 1, 2011. Ex. 8, Dec. 2011 Nursing Protocols – SOP Emails at 2. Mr. Young continued to raise the issued by e-mail. *Id.*

Ms. Young has been a registered nurse for fifteen years. Ex. 2, IROGs at 5. On August 21, 2011, Ms. Young signed a Foreign Service Employment Agreement with CHS. Ex. 9 at 1-10. On September 10, 2011, Ms. Young started working for CHS as a Medical Registered Nurse. Ex. 10, CHS Personnel Action Form. Her supervisor was Casper Jones. *Id.* In October 2011, Ms. Young arrived at Sather Air Force Base in Iraq. Ex. 11, Ramona Young Dep. ("Ra. Dep.") at 23:7-12. Upon Ms. Young's arrival, she was stationed in an Intensive Care Unit ("ICU"). *Id.* at 24:23-25:5. Prior to Ms. Young's departure for Iraq, CHS never informed her that she would be stationed in an ICU. *Id.* Ms. Young did not have experience in the ICU. *Id.* At Sather, Ms. Young noticed that there was inadequate staff, no protocols, rules or regulations, and no clear hierarchy. *Id.* at 26:21-27:10. Other CHS employees, including Chris Sheldrew, Eric Wiltz, and Caroline Merkel, also noticed these issues. Ex. 11, Ra. Dep. at 28:4-9; Ex. 12, Merkel Decl.

Ms. Young complained to Jeffrey Wetzel, CHS's EMS supervisor, about the lack of any clear operating procedures, directives, or protocols for employee responsibilities, work shifts, or reporting hierarchy, and the lack of equipment and properly trained medical personnel. Ex. 2, IROGs at 6. Ms. Young told Mr. Wetzel that these issues were "totally misleading, putting my nursing license on the line and a breach of CHS's contract for properly trained and qualified staff." *Id.*

In November 2011, CHS employee Eric Wiltz recommended to Ken Jones that CHS transfer Mr. Young to Sather because it was "in need of some leadership." Ex. 13, Nov. 7, 2011 Eric Wiltz Email at 2. Wiltz noted that Mr. Young "has been an exemplary asset to this unit" and that his "personal experience in this environment and his foresight are invaluable to the CHS organization." *Id.* at 2-3. Mr. Young was transferred to Sather in November 2011, about two weeks after Ms. Young arrived at Sather. Ex. 11 at 23:13-20.

On or about November 6, 2011, there was a CHS staff meeting at Sather. Plaintiffs' Ex. 2, IROGs at 6-7. The meeting was attended by Ms. Young, Mr. Young, Jim Spivey (Nurse Manager), Dana Brachter (Operation Room Registered Nurse), Carmen Clemens (Operating Room Registered Nurse), Len Starbeck (ICU Registered Nurse), Captain Moore, Kernel Karhan Roger (ICU Registered Nurse) and Tom Nagel (CHS Staff Manager). *Id.* At this meeting, Ms. Young told Mr. Nagel that the CHS facility was "not properly staffed, we did not have qualified staff, and that according to CHS's contract we would have, and that all staff would integrate to all aspects of the facility, be properly trained and qualified." *Id.* at 7. Ms. Young further reported to Mr. Nagel that they did not have a knowledgeable pharmacy tech, OR techs, or a respiratory therapist. *Id.* Ms. Young noted that "this is a total breach of contract." *Id.*

After the meeting, Mr. Young continued to request clear standard operating procedures,

directives and protocols from Jim Spivey. Ex. 2, IROGs at 7-8. However, Mr. Spivey never provided written guidelines and instead verbally gave *ad hoc* instructions. *Id.* at 7. On November 26, 2011, CHS named Jim Spivey the lead nurse at Sather. Ex. 14, Emails Regarding Nursing at 5. On November 29, 2011, after seeing no improvements at CHS, Mr. Young sent an e-mail to Tina LeBlanc and Laurie Tufts asking for “guidance on submitting a resignation.” Ex. 15, Emails Regarding Failed Expectations at 2. Ms. Tufts responded that a “21 day notice is required to terminate in good standing” and asked if the Youngs could call to try and salvage the situation. *Id.* After receiving this e-mail, the Mr. Young sent an e-mail to Casper Jones, informing him that the Youngs “will submit [] letters of resignation, asap.” Ex. 16, Emails Regarding Nursing at 2. Shortly thereafter, the Youngs spoke with Heidi Cox about their complaints. *See* Ex. 17, Emails Regarding Call with Senior Management; Ex. 11, Ra. Dep. at 59:12-60:3.

The Youngs complained to Ms. Cox about the “lack of protocols, the lack of management, lack of guidelines” and “[p]eople practicing outside their scope of practice,” including PAs practicing dental care and writing prescriptions for narcotics. Ex. 11, Ra. Dep. at 60:15-22. Ms. Cox asked the Youngs to give her “a month to try to...get this all together.” *Id.* at 59:16-22. Ms. Cox also told them that “things would get better,” and the Youngs agreed to stay. Ex. 17, Emails Regarding Call with Senior Management at 1. The Youngs never submitted a letter of resignation, and no travel plans were ever made to send the Youngs home 21-days after November 29, which would have been December 20, 2011. Ex. 18, Freeman Dep. at 79:12-82:10 and Ex. 12 attached thereto. The Youngs never intended to submit a letter of resignation. Ex. 11, Ra. Dep. at 61:4-9.

On December 2, 2011, Eric Wiltz gave 21-day advance notice that he was resigning,

citing ongoing issues with protocol and standards of care. Ex. 19, Email Regarding Eric Wiltz Resignation at 2. Mr. Wiltz's resignation letter began, "Effective today I am giving CHS and DOS a 21 day advanced notice of my resignation." *Id.* Mr. Wiltz sent a copy of this resignation letter to Mr. Young. *Id.*

On December 3, 2011, the Youngs witnessed CHS Acute Care Nurse Practitioner Lyndsay Brock sedate a patient ("Patient One") and intubate him without his consent. Ex. 2, IROGs at 7. As a NP, Ms. Brock was not qualified to intubate Patient One without a Certificated Registered Nurse Anesthetist ("CRNA") or anesthesiologist being present. *Id.* After the intubation problems with Patient One, Mr. Young requested a quality assurance on what occurred with the patient. Ex. 5, Ro. Dep. at 34:19-24. After that, Mr. Young approached Casper Jones and again complained about the lack of protocols. *Id.* at 34:25-35:6. As the Army was still present at Sather, Mr. Young suggested that CHS use the Army's protocols until CHS had their own protocols in place. *Id.* Casper disagreed with Mr. Young's suggestion and told him, "We're not the Army. We're CHS. We will not use their protocols." *Id.* at 35:7-10.

On December 12, 2011, Mr. Young sent an e-mail to Mr. Spivey and Mr. Nagle, asking about the lack of SOPs and protocols that Mr. Young had been inquiring about since September. Ex. 8, Dec. 2011 Nursing Protocols – SOP Emails at 1-2. After receiving no response, Mr. Young sent a follow-up e-mail, copying Casper Jones, Richard Pratt, Paul DeVane and Paul Roberts. *Id.* at 1. Mr. DeVane responded stated that Mr. Young had "some very valid concerns and raise[d] some good points." Ex. 20. No one at CHS ever disciplined the Youngs for this or told the Youngs that they did not raise their complaints properly. Ex. 11, Ra. Dep. at 77:11-22. That same day, Mr. Young also e-mailed Ms. LeBlanc and Ms. Tufts, stating that "[n]othing has been addressed" since their call with Ms. Cox on November 29. Ex. 15 at 1. Mr. Young asked

them to “keep my comments between us. Anyone here will only use them against us, not to make improvements.” *Id.*

At Sather, nurses were permitted to leave the hospital and accomplish personal tasks if there were no patients or tasks. Ex. 21, Email Regarding Off Time at 2. If there was a patient at Sather, at least one nurse needed to be physically at the hospital. *Id.* at 1. Some of the CHS staff, such as Caroline Merkel, were not happy about this policy. Ex. 22, Spivey Dep. at 77:15-78:15 and Ex. 7 attached thereto. On December 13, 2011, Ms. Merkel sent an e-mail to Mr. Spivey complaining that Ms. Young was paid for time spent out of the hospital. *Id.* Ms. Merkel threatened that “unless you want me to speak to CHS personnel above the Sather Staff, I suggest you get the nurses in alignment!!” Ex. 23, Merkel Email Regarding the Youngs.

On or about December 14 or 15, 2011, Ms. Young and Mr. Young had a teleconference with Heidi Cox. Ex. 24, Notes from Dec. Conversations; Ex. 11, Ra. Dep. at 132:1-23; Ex. 18, Freeman Dep. at 23:22-24:11. During this teleconference, the Youngs discussed their concerns with Patient One’s care. Ex. 24 at 1; Ex. 18, Freeman Dep. at 28:8-16. The Youngs also again complained about operations issues, project management, and the need for “standards, guidelines, medical protocols, rules and procedures.” Ex. 18, Freeman Dep. at 25:21-27:5 and Ex. 2 attached thereto. Mr. Young also told Ms. Cox that “CHS management at Sather is defrauding the government” and that the State Department contractual agreements are not being met. Ex. 2, IROGs at 8; Ex. 5, Ro. Dep. at 182:22-187:5; Ex. 11, Ra. Dep. at 132:8-143:7. Mr. Young also told Ms. Cox that CHS listing emergency medical technicians as scrub technicians for surgery, even though they had no surgical experience, would cost lives. Ex. 2, IROGs at 8; Ex. 5, Ro. Dep. at 183:25-185:16. Ms. Young emphasized the “potential liability” of reporting false employee staffing at Sather to the State Department. Ex. 2, IROGs at 8; Ex. 11, Ra. Dep. at



136:18-137:7, 139:1-15. Mr. Young reminded Ms. Cox that by contract, CHS did not have the two stand-alone surgical suites the contract required. Ex. 2, IROGs at 8; Ex. 5, Ro. Dep. at 185:16-186:23; Ex. 11, Ra. Dep. at 142:20-143:7.

On or about December 18, 2011, another patient (“Patient Two”) arrived at the hospital. Ex. 2, IROGs at 8. Patient Two was unresponsive and the ICU staff placed him on a ventilator. *Id.* The Youngs requested a quality review of Patient Two’s care, and Mr. DeVane reluctantly agreed. *Id.* On or about December 19, 2011, CHS convened an Ethics Committee to review Patient Two’s care. *Id.* During the committee, Mr. Young stated that Ms. Brock had been too quick to withdraw care from Patient Two. *Id.* at 8-9. Mr. Young told the committee that “letting Lindsay Brock patient with no MD oversight was illegal.” Ex. 2, IROGs at 9. Mr. Young also told them “I believed our mandate from [the government] was to stabilize and transport, not [provide] hospice [care] overseen by an unqualified nurse practitioner.” *Id.*; Ex. 5, Ro. Dep. at 203:2-204:3. Mr. Young said “we were supposed to be checked off on Critical Care skills and never were,” and that the Youngs were hired as medical surgical nurses but “forced to work critical care because no one else was equally qualified, even in med[ical] surgical skills.” Ex. 2, IROGs at 9; Ex. 5, Ro. Dep. at 205:9-19, 207:5-208:3. Mr. Young told the committee this was “illegal and breached the contract requirements.” Ex. 2, IROGs at 9. While the Youngs complained about the care provided to Patient Two, and Patient One, the Youngs also clarified that any misconduct done or poor care given was a result of the lack of rules and regulations. *See* Ex. 5, Ro. Dep. at 33:2-12.

No one at CHS ever disciplined the Youngs for their complaints about Patient One or Patient Two, and no one ever told the Youngs that they did not raise proper complaints. Ex. 11, Ra. Dep. at 77:11-22. However, the Ethics Committee decided to discontinue the practice of

having couples work the same shift so that Mr. and Ms. Young would be separated. *See* Ex. 18, Freeman Dep. at 31:7-14 and Ex. 2 attached thereto. Despite claiming that this was a change to CHS policy at all facilities, there was at least one instance after the Youngs' departure where this practice was not followed. Ex. 7, Jones Dep. at 172:3-7. In Tikrit, a married couple was allowed to work on the same shift, so long as they were in different areas of the hospital. *Id.* The hospital at Tikrit was smaller than the hospital at Sather. *Id.* at 172:8-18.

Before anyone informed the Youngs that they were to work separate shifts, CHS booked tickets for the Youngs to fly back to the US. Ex. 5, Ro. Dep. at 163:14-164:1. Shortly thereafter, Paul DeVane notified the Youngs that one of the recommendations from the Review Board was for the Youngs to work separate shifts. Ex. 18, Freeman Dep. at 28:17-29:5 and Ex. 2 attached thereto; Ex. 5, Ro. Dep. at 42:16-43:4. After hearing this, Mr. Young went to speak with Casper Jones. Ex. 5, Ro. Dep. at 43:23-25, 194:6-25. Mr. Young told Casper that they did not want to work separate shifts. *Id.* at 43:19-25, 162:7-16. Shortly thereafter, Mr. Young told Ms. Young about the new policy, and they both went to speak with Casper. Ex. 11, Ra. Dep. at 20:23-21:9. Casper told Mr. Young that he would speak to the Miami office about it, and that the Young should leave the hospital and return to their living quarters. *Id.* While Casper argued that the Youngs resigned, CHS has acknowledges that the Youngs did not resign their positions at any time. Ex. 18, Freeman Dep. at 89:18-90:6. Before she left her shift, Ms. Young "gave report to" another nurse, meaning that she gave her authority to another nurse on duty, Carmen. Ex. 5, Ro. Dep. at 112:2-24; Ex. 11, Ra. Dep. at 20:23-21:9.

On or about December 23, 2011, the Youngs had a teleconference with Gary Palmer, Dr. David Angelette, Ms. Cox, and Tom Ryan. Ex. 11, Ra. Dep. at 30:24-31:12. During this call, the Youngs complained about the care provided to Patients One and Two, which resulted from

the lack of protocols and SOPs. Ex. 5, Ro. Dep. at 33:2-12. At the end of the call, Ms. Cox asked “Just to be clear, you’re leaving on December 24th you said?” Ex. 25, Dec. 23, 2011 Call Transcript at 48:18-19. The Youngs went on to explain that they never resigned and did not want to leave. *Id.* at 48-49, 58-60

After the conference call, Ms. Cox informed the Youngs that “[w]hile CHS continues to look into the inquiry presented, it is in the best interest of all parties to continue with your departure from Iraq to HOR. You will be placed on administrative leave until the inquiry can be completed. The process could take a minimum of 14 days to complete.” Ex. 26, Email Regarding Follow Up to Dec. 23 Call at 1. The Youngs thanked Ms. Cox for her time, offered to assist the investigation in any way, and reaffirmed their commitment to working with CHS to deliver on the contract. *Id.*; Ex. 27, Email Regarding Follow Up to Dec. 23 Call at 1. On December 24, 2011 CHS placed the Youngs on administrative leave “pending outcome of inquiry” regarding the care of Patients One and Two. Exs. 28 and 29, Status Change/Termination Notification. CHS could not provide a reason for why the Youngs were placed on administrative leave during the investigation into their complaints. Ex. 18, Freeman Dep. at 63:7-65:8. CHS understood when the Youngs departed, that the Youngs “were under the impression that there was a strong possibility that they may return.” *Id.* at 87:9-88:6 and Ex. 14 attached thereto.

Ms. Freeman understood during the investigation that the Youngs’ complaints were more about the lack of SOPs, policies and protocols, rather than malpractice. *See Id.* at 68:11-16 and Ex. 8 attached thereto. Ms. Freeman and Dr. Angelette were the only two CHS employees that investigated the Youngs’ complaints. *See Id.* at 33:13-18. The only written records related to CHS’s decision to terminate the Youngs states that the reason for termination is that the majority

of staff would resign if the Youngs returned, and that Ms. Young abandoned the ICU with a patient. *Id.* at 83:15-84:18 and Ex. 13 attached thereto.

On January 30, 2012, CHS terminated the Youngs in a call with the Youngs, Ms. Freeman, Ms. Cox and Casper Jones. Exs. 30 and 31, Status Change/Termination Notification; Ex. 32, Transcript of Jan. 30 Call at 2:11-20, 11:5-12. At the time of this call, CHS understood that the Youngs wished to return to Sather. Ex. 18, Freeman Dep. at 86:12-14. During this call, Ms. Freeman told the Youngs:

11:5        So in relation to your employment at this  
6            point, you know, I had [*sic*] eluded to last week that based  
7            on a number of interviews, we've actually interviewed  
8            the majority of the staff and the majority of folks  
9            have indicated that they would resign if you were to  
10          return in country and therefore, as an employer, we've  
11          made the decision that we do not feel it's in our best  
12          interest to send you back.

Ex. 32, Transcript of Jan. 30 Call at 11:12. Ms. Freeman's notes from her investigation stated that "12 interviewees indicated that [the Youngs] were confrontational and negative attitude towards their work." Ex. 24 at 2. Ms. Freeman testified that her conclusion was based solely on a document that Dr. Angelette provided to her. Ex. 18, Freeman Dep. at 33:2-34:21 and Ex. 2 attached thereto. However, upon examination of Dr. Angelette's written findings from his investigation into the Youngs' complaint, Ms. Freeman stated that Dr. Angelette verbally told her that the majority of the twelve people interviewed would resign if the Youngs were to return to Sather. *Id.* at 39:20-41:11 and Exs. 4 and 5 attached thereto. Ms. Freeman admitted that Dr. Angelette's written findings did not state that the majority of staff would leave CHS if the Youngs returned in country. *Id.* at 40:16-41:7.

Ms. Freeman also stated that Mr. DeVane also told her that many of the staff would resign if the Youngs returned in country. Ex. 18, Freeman Dep. at 71:12-17 and Ex. 10 attached

thereto. However, Ms. Freeman admitted that Mr. DeVane’s email did not state that “many people would resign” and only stated that “we could possibly lose some very good people by making the wrong decision.” *Id.* at 71:18-72:2 and Ex. 10 attached thereto. After being questioned about the limited content of the documents provided by Mr. DeVane and Dr. Angelette, Ms. Freeman also added that Casper Jones contributed to the notion that the majority of the staff would resign if the Youngs returned in country. *See id.* at 72:14-20. There is no indication in the record that Casper Jones informed Ms. Freeman that the majority of staff would resign if the Youngs returned in country.

Dr. Angelette testified that he never made verbal reports to Ms. Freeman about his interviews with CHS staff, only written reports. *See Ex. 33, David Angelette Dep. at 82:5-83:19 and Ex. 12 attached thereto.* Dr. Angelette also testified that he never told Ms. Freeman that the majority of the staff would resign if the Youngs were to return in country. *Id.* Mr. Spivey never heard anyone say they would resign if the Youngs returned, and stated that he himself would not have resigned had the Youngs returned. Ex. 22, Spivey Dep. at 118:8-22. Ms. Brock never heard anyone say they would resign if the Youngs returned and did not think the Youngs affected the morale at Sather. Ex. 34, Lindsay Brock Dep. at 49:18-50:13.

The Youngs do not dispute Defendant’s statement of undisputed material facts: 1, 2, 6, 7, 16, 19, 22, 23, 24, 25, 28, 29, 34, 38, and 48. Below is chart illustrating the material facts in dispute:

<i>Defendant’s Assertions</i>	<i>Plaintiffs’ Disputed Facts</i>
3. The Youngs were employed to work on the “Medical Services Support Iraq” (hereinafter “the MSSSI”) contract that the Department of State had awarded to CHS to provide medical services to the Department of State personnel and US contractors and others who would remain	The MSSSI contract required CHS to submit a “completed section K” dealing with representations and certifications to receive payment. Ex. 1, CHS Contract at 85. The contract required that CHS provide “trained and certified health care professionals” and be “mission capable” by “1 December 2011.” <i>Id.</i>

<i>Defendant's Assertions</i>	<i>Plaintiffs' Disputed Facts</i>
<p>in Iraq as the US military withdrew. <i>See</i>, deposition of Casper Jones, at page 15 (hereinafter "Jones depo. at p. ____"). The MSSSI Contract was a contract where CHS billed by hours worked by labor category, and supplied to the government the identity and qualifications of individuals working under the contract. <i>See</i>, Affidavit of Casper Jones, attached to our Motion for Summary Judgment, and also as Exhibit "D", at ¶¶5-6.</p>	<p>at 9. Mission capable means "able to perform all requirements under this PWS." <i>Id.</i></p>
<p>4. The MSSSI Contract required that CHS provide for 9 clinics, 4 hospitals and a program management office for a population of approximately 17,000 throughout Iraq. <i>See</i>, Jones depo at pp 17-20.</p>	<p>The contract required that CHS establish "seven Health Units (HU), one large Diplomatic Support Hospital (DSH), and three small DSHs that provide patient care." Ex. 1, CHS Contract at 9. The DSH site was at Sather in Baghdad. <i>Id.</i>. The contract required that Sather "provide on-site primary, urgent and initial emergency care...triage, stabilize and evacuate patients to the next level of medical care... establish a medical/trauma care hospital with the following capabilities: basic x-ray, diagnostic ultrasound...have...staffing that reflects the requirements to manage two surgical patients and the possibility of multiple injured or ill patients, staffing to include competency in performing and interpreting ECG stress tests... possess a total of 2 OR tables with anesthesia and supplies...[and provide] post operative / intensive care capabilities for up to six patients to be stabilized until medically evacuated." <i>Id.</i> at 10-11.</p>
<p>5. Until December 19, 2011, the United States Army was managing the Baghdad DSH. <i>See</i>, Jones depo at pp. 27-28.</p>	<p>The contract called for CHS sites to be "mission capable" by "1 December 2011." Ex. 1, CHS Contract at 9. The United States Army was supposed to continue managing the Baghdad DSH until December 15, 2011. <i>See</i> Ex. 5, Ro. Dep. at 35:4-6, 154:22-23. However, on about December 3, 2011, CHS nurse practitioner Lyndsay Brock told an Army surgeon, and a major, to "Get the fuck out of my ICU." <i>Id.</i> at 154:8-155:2. After that, the Army stopped assisting CHS at Sather. <i>Id.</i></p>
<p>8. Within days of arriving of the Youngs</p>	<p>Casper Jones testified that Dana Bratcher told</p>

<i>Defendant's Assertions</i>	<i>Plaintiffs' Disputed Facts</i>
arriving at Sather, Ramona Young had threatened other staff members that her husband would "kick their asses". See, Jones depo at pp. 36-37; Exhibit 2 to Jones depo attached hereto as Exhibit "E".	him that Ramona Young had threatened other staff members that her husband would kick their asses. Ex. 7, Jones Dep. at 36:21-37:7. However; James Spivey, the nurse manager, testified that he never heard of Ramona Young threatening others that her husband would go after them. Ex. 22, Spivey Dep. at 127:9-22.
9. It was reported to Casper Jones by one of Ronald Young's co-workers that things would be fine "as long as Ronnie gets his way." See, Exhibit E.	In an e-mail dated November 30, 2011, Casper Jones stated that Eric Wiltz told him that "know that as long as Ronnie gets his way, things will be fine." Ex. 35, Emails Regarding Concerns from New Staff at 1. However, in an e-mail from Wiltz to Ken Jones on November 7, 2011, Wiltz made the following statements about Ronald Young "Ronald has been and[sic] exemplary asset to this unit since my arrival. His personal experience in this environment and his foresight are invaluable to the CHS organization...His leadership style: direct, clear and concise would be beneficial to Sather." Ex. 13, Nov. 7, 2011 Eric Wiltz Email at 3.
10. It was reported to Mr. Jones by Jim Spivey, the CHS nurse manager that the Youngs "were not very cooperative with him; you know, not very willing to adjust their schedules; ...they were, you know, combative and overly aggressive." See, Jones depo. at p. 39, 46. Lines 1-6.	Jim Spivey does not recall ever telling Casper Jones that he wanted the Youngs out of CHS. Ex. 22, Spivey Dep. at 128:11-15 and Ex. 12 attached thereto. Jim Spivey testified that the Youngs were ordered to work separate shifts because "one of the other nurses or something said that they were being -- the Youngs were not cooperative with them." <i>Id.</i> at 72:15-73:5. Spivey did not believe that the Youngs needed to be separated. <i>Id.</i> at 115:14-16. Spivey would have continued to work had the Youngs returned to Sather. <i>Id.</i> at 118:11-14. Spivey was not aware of any CHS employees who would have resigned had the Youngs returned to Sather. <i>Id.</i> at 118:15-22. Spivey did not notice any change in the work environment after the Youngs departed CHS. Ex. 22, Spivey Dep. at 121:17-122:10.
11. The Youngs "were certainly creating an environment that was not conducive to the best patient care environment." <i>Id.</i>	The Youngs did not negatively affect the work environment at CHS Sather. <i>Id.</i> at 121:17-122:10.
12. From the time the Youngs arrived at Sather until leaving on December 25, 2011, the	Starting in September 2011, the Youngs made various complaints to CHS management,

<b><i>Defendant's Assertions</i></b>	<b><i>Plaintiffs' Disputed Facts</i></b>
<p>Youngs, particularly Ronald Young, complained about the lack of written standard operating procedures and about alleged patient care shortcoming issues as well as what they considered to be unqualified and/or inadequately trained co-workers. The Youngs claimed that CHS did not have the right standards in place or the right people in place to perform the MSSSI contract. <i>See</i>, Ro. Young depo at page 69.</p>	<p>including that expired medication was used, there was a lack of written SOPs, guidelines and directives, staff were not properly trained, there was inadequate staff, there were not two stand-alone surgical units in place, CHS did not meet the contract requirements, and CHS was defrauding the government. Ex. 18, Freeman Dep. at 25:21-27:5 and Ex. 2 attached thereto; Ex. 5, Ro. Dep. at 182:22-187:5; Ex. 11, Ra. Dep. at 132:8-143:8.</p>
<p>13. The Youngs saw their role in 2011 as being the best patient advocates for all their patients that were at Sather and particularly in the case of “patient one” and “patient two” who the Youngs thought received particularly improper care. <i>See</i>, Ro. Young depo. at page 70.</p>	<p>While the Youngs complained about the care provided to Patient Two, and Patient One, the Youngs also complained that any misconduct done or poor care given was a result of the lack of rules and regulations. <i>See</i> Ro. Young Dep. (Ex. A) at 33:2-12.</p>
<p>14. Ronald Young claimed that CHS Middle East was not meeting its obligation to the Government because of “failure to staff with the correct personnel”. Specifically, Ronald Young claimed that it was not proper to use emergency medical technicians (“EMTs”) to successfully work combat trauma just by teaching it to them and that it was improper to use them as operating room technicians. <i>See</i>, Ro. Young, depo at, pages 136-38.</p>	<p>Mr. Young made complaints that the staffing was not adequate and that the staff was not properly trained. Specifically, Mr. Young also reported that using EMTs as scrub technicians would cost lives and that two OR nurses were practicing outside of their scope of practice. Ex. 5, Ro. Dep. at 141:10-25, 183:25-185:6.</p>
<p>15. In fact, the MSSSI contract specifically allowed for EMTs to be utilized and cross trained as operating room technicians. <i>See</i>, Affidavit of Casper Jones, attached hereto as Exhibit “D”, at ¶¶ 6-12.</p>	<p>The MSSSI contract required that CHS provide “trained and certified health care professionals,” but also required emergency medical technicians (EMTs), registered nurses and vocational nurses “that do not exceed the scope of practice.” <i>Id.</i> at 9, 18.</p>
<p>17. The MSSSI allowed for nurses to be cross-trained in other labor categories. <i>See</i>, Jones depo at pp. 79-80.</p>	<p>See response to # 15.</p>
<p>18. Ronald Young’s claim that letting nurse practitioner Lindsey Brock practice with no direct medical doctor oversight was illegal because that medical doctor had to have critical care credentials. <i>See</i>, Ro. Young deposition, page 202. However, Ronald Young admitted that he could not cite to a</p>	<p>Regarding Ms. Brock, Mr. Young stated that Dr. Hagel “never came back there and wrote orders or never came back there and did...any kind of physical exam on the patient” with regards to Patients One and Two. Ex. 5, Ro. Dep. at 201:14-202:13.</p>



<i>Defendant's Assertions</i>	<i>Plaintiffs' Disputed Facts</i>
<p>statute, rule or regulation that CHS's Dr. Hagel who did provide the oversight, was not qualified to give oversight. <i>Id.</i> at page 202.</p>	
<p>20. Ronald Young admitted that there were policies and standard operating procedures which were good protocols at the Sather Clinic which was still being operated by the Army until December 18, 2011, but claimed that no one at CHS instructed him to use those protocols. <i>See, Ro. Young depo at pp. 33-35.</i></p>	<p>Mr. Young stated that the Army had its own policies and standard operating procedures, but Casper Jones told Mr. Young to "cease them." Ex. 5, Ro. Dep. at 33:13-34:16 In December 2015, sometime prior to December 15, Mr. Young went to Casper Jones and told him "we still don't have any standing orders, we don't have any directives, any protocols. We have the Army's here." Jones responded that "We're not the Army. We're CHS. We will not use their protocols." <i>Id.</i> at 34:25-35:10.</p>
<p>21. Ronald Young claimed that he and his wife's "primary concern and our primary anxiety" was over patient one and patient two. <i>See, Ro. Young depo. at p. 39.</i></p>	<p>While the Youngs complained about the care provided to Patient Two, and Patient One, the Youngs also complained that any misconduct done or poor care given was a result of the lack of rules and regulations. <i>See Ex. 5, Ro. Dep. at 33:2-12.</i></p> <p>Starting in September 2011, the Youngs made various complaints to CHS management, including that expired medication was used, there was a lack of written SOPs, guidelines and directives, staff were not properly trained, there was inadequate staff, there were not two stand-alone surgical units in place, CHS did not meet the contract requirements, and CHS was defrauding the government. Ex. 18, Freeman Dep. at 25:21-27:5 and Ex. 2 attached thereto; Ex. 5, Ro. Dep. at 182:22-187:5; Ex. 11, Ra. Dep. at 132:8-143:8.</p> <p>Mr. Young stated that at the time of the December 22, 2011 call, his and Ms. Young's "primary concern and our primary anxiety was over the two patients." Ex. 5, Ro. Dep. at 39:19-23.</p>
<p>26. Ronald Young admitted that because of his patient advocacy, other CHSME employees had low morale - specifically one OR nurse and a nurse practitioner. <i>See, Ro. Young depo at p. 114.</i> Ronald Young states that</p>	<p>According to other employees, the Youngs did not negatively affect the work environment at CHS Sather. Ex. 22, Spivey Dep. at 121:17-122:10; Ex. 34, Brock Dep. at 92:4-9.</p>

<i>Defendant's Assertions</i>	<i>Plaintiffs' Disputed Facts</i>
<p>they probably had very low morale “because I was going to force them to do good quality patient care, and they did not want to do that”. <i>See</i>, Ro. Young depo. at p. 113.</p>	
<p>27. On December 14, 2011, Mr. DeVane had to counsel Mr. Young to address his “issues” in order to be part of “one team”. <i>See</i>, Jones depo, Exhibit 8 (email from Paul Devane to Ronald Young dated December 14, 2011 at 8:03) attached hereto as Exhibit “F”.</p>	<p>The Youngs were never formally disciplined during their time at Sather, until they were placed on administrative leave and sent home. Ex. 7 Jones Dep. at 40:10-19;</p>
<p>30. On December 19, 2011, Mr. Young started complaining about the specific care being provided to an ICU patient (patient two) to Mr. DeVane. When Mr. DeVane replied that he was not a medical provider, Mr. Young raised his voice to the point where Mr. DeVane asked him to go outside the Hospital. <i>See</i>, Jones depo, Exhibit 12 attached hereto as Exhibit “T”.</p>	<p>On or about December 18, 2011, Patient Two arrived at the hospital. Ex. 2, IROGs at 8. Patient Two was unresponsive and the ICU staff placed him on a ventilator. <i>Id.</i> The Youngs requested a quality review of Patient Two’s care, and Mr. DeVane reluctantly agreed. <i>Id.</i></p>
<p>31. According to the Memorandum authored by Mr. DeVane concerning this interaction with Mr. Young, Young continued to raise his voice to the point where Mr. DeVane had to instruct him to lower it. Young continued to complain about the care provided to patient one, the qualifications of the nurse practitioner Lyndsay Brock, and that he was not being listened to by CHS. <i>Id.</i></p>	<p>On or about December 18, 2011, Patient Two arrived at the hospital. Ex. 2, IROGs at 8. Patient Two was unresponsive and the ICU staff placed him on a ventilator. <i>Id.</i> The Youngs requested a quality review of Patient Two’s care, and Mr. DeVane reluctantly agreed. <i>Id.</i></p>
<p>32. Mr. DeVane concluded in his Memorandum that Mr. Young either needed to be evaluated by the Mental Health professional Dr. Jordan or “terminated because I feel he is a liability to our program, ...” <i>Id.</i></p>	<p>In response to Mr. DeVane’s Memorandum, Casper Jones asked Paige Valdiserri to look into whether Mr. Young “has a history of PTSD” and if there was any “verbal or physical violence in a former work place.” These claims were never substantiated. Casper also stated that Mr. Young “may have falsified some of his resume” and stated that he was “looking into that piece.” These claims were never substantiated. Casper concluded by stating that the Youngs “submitted their intent to resign 20 days ago and never retracted” it. Ex. 7 Jones Dep. at 108:12-113:16 and Ex. 12 attached thereto.</p>

<i>Defendant's Assertions</i>	<i>Plaintiffs' Disputed Facts</i>
33. A Medical Review Board was convened to discuss the Youngs' concerns. <i>See</i> , Jones depo., Exhibit 15 (email from Paul DeVane to Casper Jones, December 20, 2011, 7:08am) attached hereto as Exhibit "J"	On or about December 19, 2011, CHS convened an Ethics Committee to review the care of Patient One and Two. Ex. 2, IROGs at 8.
35. It was apparent to the Review Board that the ICU staff was not functioning as a "team" due in part to the Youngs' refusal to take "direction" from "their Provider who is ultimately responsible for the patient care decisions." <i>Id.</i>	According to CHS employees, the Youngs departure did not have an effect on the staff at Sather. Ex. 34, Brock Dep. at 92:4-9; Ex. 22, Spivey Dep. at 121:17-122:10.
36. The Board's recommendation to improve functioning within the Unit was to have the Youngs work separate shifts. <i>Id.</i>	The Ethics Committee decided to discontinue the practice of having couples work the same shift so that Mr. and Ms. Young would be separated. <i>See</i> Ex. 18, Freeman Dep. at 31:6-14 and Ex. 2 attached thereto. Despite claiming that this was a change to CHS policy at all facilities, there was at least one instance after the Youngs' departure where this practice was not adhered to. Ex. 7 Jones Dep. at 172:3-7. In Tikrit, a married couple was allowed to work on the same shift. <i>Id.</i>
37. Mr. Young, in response to this directive, said "it wasn't going to happen", and "semi-threatened to take legal action..." <i>Id.</i>	After hearing about the new policy, Mr. Young went to speak with Casper Jones and told Casper that they did not want to work separate shifts. Ex. 5, Ro. Dep. at 43:23-25, 162:7-16, 194:6-25. Shortly thereafter, Mr. Young told Ms. Young about the new policy, and they both went to speak with Casper. Ex. 11, Ra. Dep. at 20:23-21:9. Casper told Mr. Young that he would speak to the Miami office about it and that the Young should go to their living quarters. <i>Id.</i>
39. Mr. Young specifically told the Project Manager Casper Jones "this will not stand; this is unacceptable; we will not do this." <i>See</i> , Jones depo at p. 121 lines 6-14.	After hearing about the new policy, Mr. Young went to speak with Casper Jones and told Casper that they did not want to work separate shifts. Ex. 5, Ro. Dep. at 43:23-25, 162:7-16, 194:6-25. Shortly thereafter, Mr. Young told Ms. Young about the new policy, and they both went to speak with Casper. Ex. 11, Ra. Dep. at 20:23-21:9. Casper told Mr. Young that he would speak to the Miami office about it and that the Young should go to their living quarters. <i>Id.</i>
40. Mr. Jones informed management of CHS in	CHS made the Youngs depart. Before anyone

<i>Defendant's Assertions</i>	<i>Plaintiffs' Disputed Facts</i>
<p>the United States at 5:01 am that the Youngs had “decided to depart”, and he then went to the Movement Office to begin the process of transporting the Youngs back to the U.S. See, Jones depo at pp. 122-123; Exhibit 15 attached hereto as Exhibit “J”(email from Casper Jones to Heidi Cox et al, December 20, 2011, 5:01am).</p>	<p>informed the Youngs that they were to work separate shifts, CHS booked tickets for the Youngs back to the U.S. Ex. 5, Ro. Dep. at 163:14-164:1. The Youngs spoke with Casper Jones, who told them that he would speak to the Miami office about it, and that the Young should go to their living quarters. Ex. 11, Ra. Dep. at 20:23-21:9.</p>
<p>41. When CHS said it would investigate and in the meanwhile, send them home on paid leave, the Youngs demanded to be heard by senior CHS management. A conference call meeting was held on December 22, 2011 where the Youngs actively voiced their view of what had happened and why they were being retaliated against. This call was recorded with the Youngs’ consent. A true copy of the transcript of this call is attached as Exhibit "K".</p>	<p>On or about December 23, 2015, the Youngs had a teleconference with Mr. Palmer, Dr. Dr. Angelette, Ms. Cox, and Mr. Ryan. Ex. 11, Ra. Dep. at 30:24-31:12. During this call, the Youngs complained about the care provided to Patients One and Two, which resulted from the lack of protocols and SOPs. Ex. 5, Ro. Dep. at 33:2-12. At the end of the call, Ms. Cox asked “Just to be clear, you’re leaving on December 24th you said?” Ex. 25, Call Transcript at 48:18-19. The Youngs went on to explain that they never resigned, and did not want to leave. <i>Id.</i> at 48-49, 58-60.</p>
<p>42. During this recorded conference call, setting forth their grievances, the Youngs admitted that they had refused to work separate shifts, feeling that they had been retaliated against for being patient advocates. Exhibit K at p. 25 No mention is made by the Youngs at any time during this call of improper billing, fraud, etc.</p>	<p>On or about December 23, 2015, the Youngs had a teleconference with Mr. Palmer, Dr. Dr. Angelette, Ms. Cox, and Mr. Ryan. Ex. 11, Ra. Dep. at 30:24-31:12. During this call, the Youngs complained about the care provided to Patients One and Two, which resulted from the lack of protocols and SOPs. Ex. 5, Ro. Dep. at 33:2-12. At the end of the call, Ms. Cox asked “Just to be clear, you’re leaving on December 24th you said?” Ex. 25, Call Transcript at 48:18-19. The Youngs went on to explain that they never resigned, and did not want to leave. <i>Id.</i> at 48-49, 58-60.</p>
<p>43. CHS management referred the Youngs’ grievances to CHSME HR Director, Edie Freeman, and placed the Youngs on a paid leave of absence while Ms. Freeman commenced an independent investigation. See, Exhibit 4 to the deposition of Dr. David Angelette, attached hereto as Exhibit “L” (email from Edie Widener dated December 29, 2011 9:39am)</p>	<p>After the conference call, Ms. Cox informed the Youngs that “[w]hile CHS continues to look into the inquiry presented, it is in the best interest of all parties to continue with your departure from Iraq to HOR. You will be placed on administrative leave until the inquiry can be completed. The process could take a minimum of 14 days to complete.” Ex. 26 Email Regarding Follow Up to Dec. 23 Call at 1. On December 24, 2011 CHS placed the</p>

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	<p>Youngs on administrative leave “pending outcome of inquiry” regarding the care of Patients 1 and 2. Exs. 28 and 29, Status Change/Termination Notification. CHS could not provide a reason for why the Youngs were placed on administrative leave during the investigation into their complaints. Ex. 18, Freeman Dep. at 63:7-65:8. CHS understood when the Youngs departed, that the Youngs “were under the impression that there was a strong possibility that they may return.” <i>Id.</i> at 87:9-88:6 and Ex. 14 at 2 attached thereto.</p>
<p>44. As part of the investigation, CHS HR Director Freeman reviewed the Youngs’ allegations and conduct. Among matters reviewed were the Youngs’ interaction with their co-workers. Regarding that, Ms. Freeman reviewed a Memorandum from Dr. Angelette who interviewed 12 of the Youngs’ co-workers and on January 25, 2012, sent Ms. Freeman a Memorandum, Exhibit “M” attached hereto. This memorandum cited two co-workers noting that Ramona and Ronald Young abandoned or did not show up to cover a shift after being told they would be working separate shifts. Exhibit “M” also cited the Youngs threatening of lawsuits and morale damaging interaction with co-workers.</p>	<p>During the investigation, Ms. Freeman understood that the Youngs’ complaints were about the lack of SOPs, policies and protocols, rather than malpractice. <i>See id.</i> at 68:11-16 and Ex. 8 attached thereto. Ms. Freeman and Dr. Angelette were the only two CHS employees that investigated the Youngs’ complaints. <i>See id.</i> at 33:13-18. The only written records related to CHS’s decision to terminate the Youngs states that the reason for termination is that the majority of staff would resign if the Youngs returned, and that Ms. Young abandoned the ICU with a patient. <i>Id.</i> at 83:15-84:18 and Ex. 13 attached thereto.</p> <p>However, Dr. Angelette testified that he never told Ms. Freeman that the majority of the staff would resign if the Youngs were to return in country. Ex. 33, Angelette Dep. at 82:5-83:19. Mr. Spivey never heard anyone say they would resign if the Youngs returned, and stated that he himself would not have resigned had the Youngs returned. Ex. 22, Spivey Dep. at 118:8-22. Ms. Brock never heard anyone say they would resign if the Youngs returned, and did not think the Youngs affected the morale at Sather. Ex. 34, Brock Dep. at 49:18-50:12.</p>
<p>45. On January 30, 2012, Ms. Freeman called the Youngs, and in a conversation, terminated their employment because of their insubordinate action in refusing to work separate shifts (although the Youngs now claim that they were willing to work</p>	<p>On January 30, 2012, CHS terminated the Youngs in a call with the Youngs, Ms. Freeman, Ms. Cox and Casper Jones. Ex. 30; Ex. 31; Ex. 32, Transcript of Jan. 30 Call at 2:1-20, 11:5-12. During this call, Ms. Freeman told the Youngs: “So in relation to your</p>

<b><i>Defendant's Assertions</i></b>	<b><i>Plaintiffs' Disputed Facts</i></b>
<p>separate shifts) as well as the difficulty the Youngs had interacting with co-workers, which Ms. Freeman had been told would result in other workers ceasing employment if the Youngs were to return. <i>See</i> transcript of January 30, 2012 phone call copy attached hereto as Exhibit "N".</p>	<p>employment at this point, you know, I had eluded to last week that based on a number of interviews, we've actually interviewed the majority of the staff and the majority of folks have indicated that they would resign if you were to return in country and therefore, as an employer, we've made the decision that we do not feel it's in our best interest to send you back." Ex. 32, Transcript of Jan. 30 Call at 11:12. Ms. Freeman's notes from her investigation stated that "12 interviewed indicated that [the Youngs] were confrontational and negative attitude towards their work." Ex. 24, Notes from December Conversations at 2.</p>
<p>46. Similarly, Ms. Freeman reviewed – and believed – allegations that the Youngs had failed to show up for work in protest of their being told to work separate shifts. And, Ms. Freeman reviewed and listened to the tape of the December 22, 2011 meeting (transcript is at Exhibit K hereto) and found the Youngs tone and demeanor in continuing to challenge the Medical Review panel as insubordinate <i>See</i>, Exhibit 12 to the deposition of Dr. David Angelette, (Bates # CHS 0000052) attached hereto as Exhibit "O" (timeline of Edie Freeman's investigation of the Youngs employment issues).</p>	<p>The Youngs never failed to show up for work. Mr. DeVane notified the Youngs that one of the recommendations from the Review Board was for the Youngs to work separate shifts. Ex. 18, Freeman Dep. at 28:17-29:5 and Ex. 2 attached thereto; Ex. 5, Ro. Dep. at 42:16-43:4. After hearing this, Mr. Young went to speak with Casper Jones and told him that they did not want to work separate shifts. <i>Id.</i> at 43:19-25, 162:7-16, 194:6-25. Shortly thereafter, Mr. Young told Ms. Young about the new policy, and they both went to speak with Casper. Ex. 11, Ra. Dep. at 20:23-21:9. Casper told Mr. Young that he would speak to the Miami office about it and that the Young should go to their living quarters. <i>Id.</i> Before she left her shift, Ms. Young "gave report to another nurse," meaning that she gave her authority to another nurse on duty. Ex. 5, Ro. Dep. at 112:2-24; Ex. 11, Ra. Dep. at 20:23-21:9.</p>
<p>47. The Youngs had threatened to resign or purported to resign in several emails they sent in November and December of 2011. <i>See</i> emails collected at Exhibit "P."</p>	<p>On November 29, 2011, after seeing no improvements at CHS, Mr. Young sent an e-mail to Tina LeBlanc and Laurie Tufts asking for "guidance on submitting a resignation." Ex. 15, Emails Regarding Failed Expectations at 2. Ms. Tufts responded that a "21 day notice is required to terminate in good standing" and asked if the Youngs could call to try and salvage the situation. <i>Id.</i> After receiving this e-mail, the Mr. Young sent an e-mail to Casper</p>

<i>Defendant's Assertions</i>	<i>Plaintiffs' Disputed Facts</i>
	<p>Jones, informing him that the Youngs “will submit [] letters of resignation, asap.” Ex. 16, Emails Regarding Nursing at 2. Shortly thereafter, the Youngs spoke with Heidi Cox about their complaints. See Ex. 17 Emails Regarding Call with Senior Management at 1; Ex. 11, Ra. Dep. at 59:12-60:3. Ms. Cox also told them that “things would get better” and the Youngs agreed to stay. Ex. 17 at 1. The Youngs never submitted a letter of resignation, and no travel plans were ever made to send the Youngs home 21-days after November, which was December 20, 2011. Ex. 18, Freeman Dep. at 79:12-82:10 and Ex. 12 attached thereto. The Youngs never intended to submit a letter of resignation. Ex. 11, Ra. Dep. at 61:4-9.</p>

## II. STANDARD OF REVIEW

A motion for summary judgment will be granted only if there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. See Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). “A dispute is genuine if a reasonable jury could return a verdict for the nonmoving party,” and “a fact is material if it might affect the outcome of the suit under the governing law.” *Jacobs v. N.C. Admin. Office of the Courts*, 780 F.3d 562, 568-69 (4th Cir. 2015) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)) (citing *Libertarian Party of Va. v. Judd*, 718 F.3d 308, 313 (4th Cir.2013)). If there factual issues clearly exist “that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party,” then summary judgment is inappropriate. See *Anderson* 477 U.S. at 250. When ruling on a motion for summary judgment, the court must construe the facts alleged in the light most favorable to the nonmoving party. See *Tolan v. Cotton*, 134 S. Ct. 1861, 1866 (2014); *Scott v. Harris*, 550 U.S. 372, 378 (2007); *Jacobs*, 780 F.3d at 568.

### III. ARGUMENT

#### A. The Youngs' False Claim Act Retaliation Claim Should Proceed to Trial

“The False Claims Act’s whistleblower provision prohibits retaliation ‘because of lawful acts done...in furtherance of an action’ under, or otherwise ‘to stop 1 or more violations of,’ the False Claims Act.” *Young et al. v. CHS Middle East, LLC*, No. 13-2342, 1, 3 (4th Cir. Filed May 27, 2015). To state a claim for § 3730(h) retaliation the Plaintiffs need only to allege that (1) they engaged in activity protected by the statute; (2) their employer knew they engaged in protected activity; and (3) they were discharged because they engaged in protected activity. *See Eberhardt v. Integrated Design & Const., Inc.*, 167 F.3d 861, 866 (4th Cir. 1999); *see also Zahodnick v. IBM Corp.*, 135 F.3d 911, 914 (4th Cir. 1997). Significantly, the Supreme Court has specifically noted that “proving a violation of § 3729 is **not** an element of a § 3730(h) cause of action.” *Graham County Soil & Water Conservation Dist. v. United States ex rel. Wilson*, 545 U.S. 409, 416 n.1 (2005) (emphasis added). The second prong of this standard is not in dispute: the Plaintiffs’ made many of their protected disclosures to Defendant’s employees, managers and executives directly. The matter before the Court is whether the Plaintiffs’ behavior qualifies as protected activity under the statute, and whether that protected activity was the reason for the Plaintiffs’ termination.

##### 1. The Youngs Engaged in Protected Activity Under the FCA.

Protected conduct under § 3730(h) should be construed broadly. *See Eberhardt*, 167 F.3d at 866-68. An employee engages in protected activity when litigation is a “distinct possibility,” when the employee’s conduct “reasonably could lead to a viable FCA action,” or when litigation is a “reasonable possibility.” *See id.* at 867. Consistent with the Fourth Circuit’s expansive definition of FCA protected conduct, the legislative history of § 3730(h) demonstrates that



Congress intended that the FCA’s whistleblower protections be broadly construed. *See* S. Rep. No. 345, 99th Cong., 2d Sess. 34, reprinted in 1986 U.S.C.C.A.N. 5266 (“[T]he committee believes protection should extend not only to actual qui tam litigants, but to those who assist or testify for a litigant, as well as those who assist the government in bringing a false claims action. Protected activity should therefore be interpreted broadly.”); *see also* *Young*, No. 13-2342 at 6 (“The whistleblower provision, which Congress broadened in 2009...”).

Section 3730(h) specifically lists “investigation for” a qui tam action as protected conduct, i.e., a plaintiff is protected when he investigates matters which reasonably could lead to a viable FCA action. *See* 31 U.S.C. § 3730(h); *Eberhardt*, 110 F. Supp. 2d at 867. An employee “need not have actually filed a qui tam suit or even know about the protections of section 3730(h) in order to engage in protected activity.” *See Eberhardt*, 167 F.3d at 866-67 (quoting *Zahodnick*, 135 F.3d at 914). The FCA does not require that an employee “must already have discovered a completed case” to be protected. *See U.S. ex rel. Yesudian v. Howard Univ.*, 153 F.3d 731, 740 (D.C. Cir. 1998). Instead, the FCA protects employees “while they are collecting information about a possible fraud before they have put all the pieces together.” *See Neal v. Honeywell Inc.*, 33 F.3d 860, 864 (7th Cir. 1994). As the D.C. Circuit explained in *Yesudian*, a case that the Fourth Circuit cited with approval in *Eberhardt*:

An initial investigation may well further an action under the Act, even though the employee does not know it at the time of the investigation. Were that not the case, only lawyers – or those versed in the law—would be protected by the statute, as only they would know from the outset that what they were investigating would lead to a False Claims Act prosecution. There is no suggestion in the legislative history that Congress meant to extend protection only to lawyers or to others only after they have consulted with lawyers.

153 F.3d at 741. Protected activity does not include activity “in which an employee...fabricates a tale of fraud to extract concessions from the employer, or...just imagines fraud but lacks

proof.” *Young*, No. 13-2342 at 8 (quoting *Mann v. Heckler & Koch Defense, Inc.*, 630 F.3d 338, 343-44 (4th Cir. 2010) (internal quotation omitted).

In *United States v. Triple Canopy, Inc.*, the Fourth Circuit held the government asserted viable claims under the FCA when it alleged that Triple Canopy provided and billed for guards who did not meet the requisite qualifications of a government award firm-fixed price contract to provide security services at the Al Asad Airbase in Iraq. *See U.S. v. Triple Canopy, Inc.*, 775 F.3d 628, 636-37 (4th Cir. Jan. 8, 2015). The *Triple Canopy* Court held that a plaintiff “pleads a false claim when it alleges that the contractor, with the requisite scienter, made a request for payment under a contract and withheld information about its noncompliance with material contractual requirements.” *Young*, No. 13-2342 at 8 (quoting *Triple Canopy, Inc.* at 636). “Logically, if making false implied staffing certifications to the government can constitute a [FCA] violation, acts undertaken to, for example, investigate, stop, or bring an action regarding such false implied staffing certifications can constitute protected activity for the purposes of a retaliation claim.” *Id.* at 8-9 (citing 31 U.S.C. § 3730(h)).

Here, the Youngs engaged in protected activity on numerous occasions beginning in September 2011 with Mr. Young’s complaints about the use of expired medications and the lack of nursing Standard Operations Procedures (“SOPs”) and protocols. Ex. 5, Ro. Dep. at 74:9-18, 179:8-17; Ex. 8, Dec. 2011 Nursing Protocols – SOP Emails. Shortly thereafter, in October 2011 when Ms. Young arrived at Sather, she complained about the lack of any clear operating procedures, directives, or protocols for employee responsibilities, work shifts, or reporting hierarchy, and the lack of equipment and properly trained medical personnel. Ex. 11, Ra. Dep. at 26:21-27:25; Ex. 2, IROGs at 6. In November 2011, after Mr. Young was transferred to Sather, the Youngs continued to make complaints to CHS management about improperly trained staff,

inadequate staff, inadequate facilities and the lack of protocols and guidelines. Ex. 2, IROGs at 7. On about November 29, 2015, the Youngs spoke with Ms. Cox after inquiring about CHS's resignation policy. See Ex. 17, Emails Regarding Call with Senior Management; Ex. 11, Ra. Dep. at 59:12-60:3. The Youngs complained to Ms. Cox about the "lack of protocols, the lack of management, lack of guidelines" and "[p]eople practicing outside their scope of practice," including PAs practicing dental care and writing prescriptions for narcotics. Ex. 11, Ra. Dep. at 60:15-22. Ms. Cox told them that "things would get better" and the Youngs agreed to stay. Ex. 17, Emails Regarding Call with Senior Management at 1.

On December 3, after the improper care of Patient One, the Youngs became even more vigorous in their complaints. Mr. Young requested a quality assurance on what occurred with the patient. Ex. 5, Ro. Dep. at 34:19-24. When that was denied, Mr. Young approached Casper Jones and again complained about the lack of protocols. *Id.* at 34:25-35:3. When still no changes took place, Mr. Young sent an e-mail on December 12 to Mr. Spivey and Mr. Nagle, asking about the lack of SOPs and protocols that Mr. Young had been inquiring about since September. Ex. 8, Dec. 2011 Nursing Protocols – SOP Emails at 1. After receiving no response, Mr. Young sent a follow-up e-mail, copying Casper Jones, Richard Pratt, Paul DeVane and Paul Roberts. *Id.* at 1-2. Mr. DeVane recognized that Mr. Young had "some very valid concerns and raise[d] some good pints." Ex. 20, Devane's Response to Nursing Protocols – SOP Emails at 1.

The Youngs continued to complain up the chain, emailing Ms. LeBlanc and Ms. Tufts to state that "[n]othing has been addressed" since their call with Ms. Cox on November 29. Ex.15, Emails Regarding Failed Expectations at 1. The Youngs were particularly concerned with possible retaliation, and asked Ms. LeBlanc and Ms. Tufts "keep my comments between us. Anyone here will only use them against us, not to make improvements." *Id.*

On or about December 14 or 15, 2011, Ms. Young and Mr. Young again engaged in protected conduct when they reiterated their complaints in a teleconference with Ms. Cox. Ex. 24, Notes from December Conversations; Ex. 11, Ra. Dep. at 132:1-23; Ex. 18, Freeman Dep. at 23:22-24:11. During this call, the Youngs complained about operations issues, project management, the lack of SOPs and guidelines. Ex. 18, Freeman Dep. at 25:21-27:5 and Ex. 2 attached thereto. The Youngs particularly stated that they believed CHS was defrauding the government, that improper staffing would cost lives, and that there was potentially liability for reporting false employee staffing. Ex. 5, Ro. Dep. at 182:22-187:5; Ex. 11, Ra. Dep. at 132:8-143:8. On December 19, 2011, at the Ethics Committee convened by CHS at Mr. Young's request, the Youngs engaged in additional protected activity, stating that CHS was not following the government's mandate and its practices were "illegal." Ex. 2, IROGs at 8-9; Ex. 5, Ro. Dep. at 203:2-204:3, 205:9-19, 207:5-208:3.

**2. Defendant Took an Adverse Action Against the Youngs by Terminating Their Employment Because the Youngs Engaged in Protected Activity.**

"[V]ery little evidence of a causal connection is required to establish a prima facie case." *See EEOC v. Mental Health Auth. of St. Mary's, Inc.*, 2008 WL 53254, at \*8 (D. Md. 2008). "Mere closeness in time" may be enough for the causation element of a retaliation claim; but where temporal proximity is lacking, courts may look to the intervening period for other evidence of retaliatory animus and evidence of recurring retaliatory animus during the intervening period can be sufficient. *See id.* (emphasis added). Indirect proof of a causal connection may include, in addition to temporal proximity, an intervening pattern of retaliatory conduct, inconsistent reasons by the employer for the adverse action, and differential treatment of other employees. *See Lorenz v. Federal Express Corp.*, 2012 WL 4459570, at \*10-11 (W.D. Va. 2012).

Here, causation is shown by the close temporal proximity between the Youngs' protected activity and their termination. While the Youngs raised complaints as early as September 2011, their complaints became more rigorous after the improper care of Patient One. In the Youngs' call with Ms. Cox, CHS's Director of International Operations, on December 15, 2011, the Youngs raised the issues of fraud and liability for the first time. Ex. 5, Ro. Dep. at 182:22-187:5; Ex. 11, Ra. Dep. at 132:8-143:8. Only four days later, on December 19, 2011, CHS decided to institute a policy that married couples could not work on the same shift, specifically aimed to force the Youngs to resign. See Ex. 18, Freeman Dep. at 31:6-14 and Ex. 2 attached thereto; Ex. 5, Ro. Dep. at 163:14-164:1. When the Youngs complained about this policy, Ms. Cox agreed to investigate, but placed the Youngs on administrative leave and sent them out of Iraq during the investigation. Ex. 26 Email Regarding Follow Up to Dec. 23 Call.

Causation is further demonstrated because CHS's stated reasons for terminating the Youngs are false. In the January 30, 2012, call where CHS terminated the Youngs, Ms. Freeman stated that CHS "made the decision" to terminate the Youngs based on interviews with "the majority of the staff...[where] the majority of folks have indicated that they would resign if you were to return in country." Ex. 32, Transcript of Jan. 30 Call at 11:5-12. In her deposition, Ms. Freeman admitted that there is no written record to support this, and stated that she relied on what Dr. Angelette verbally told her. Ex. 18, Freeman Dep. at 39:20-41:11 and Exs. 4 and 5 attached thereto. However, Dr. Angelette testified that he never made verbal reports to Ms. Freeman about his interviews with CHS staff, only written reports. Ex. 33, Angelette Dep. at 82:5-83:19 and Ex. 12 attached thereto. Dr. Angelette also testified that he never told Ms. Freeman that the majority of the staff would resign if the Youngs were to return in country. *Id.*

Ms. Freeman also stated that Ms. Young abandoned her patient when she was on duty.

Ex. 32, Transcript of Jan. 30 Call at 11:18-20. However, Ms. Young never abandoned her patient. *Id.* at 11:21-3. Before she left her shift, Ms. Young “gave report to another nurse,” meaning that she gave her authority to another nurse on duty, Carmen. Ex. 5, Ro. Dep. at 112:2-24; Ex. 11, Ra. Dep. at 20:23-21:9. Ms. Freeman also stated that CHS expressed concerns with the Youngs’ behavior. Ex. 32, Transcript of Jan. 30 Call at 11:14-18. However, Mr. Young was transferred to Sather specifically for his “leadership style: direct, clear, and concise [which] would be beneficial to Sather.” Ex. 13, Nov. 7, 2011 Eric Wiltz Email. The stress felt by the CHS staff was a result of poor management and a lack of protocols, not the Youngs’ presence. *See* Ex. 34, Brock Dep. at 49:18-50:13; *see also* Ex. 22, Spivey Dep. at 118:8-22. Specifically, Mr. Spivey and Ms. Brock testified they never heard anyone say they would have resigned if the Youngs returned, and they themselves would not have resigned; Ex. 22, Spivey Dep. at 118:8-22; Ex. 34, Brock Dep. at 49:18-50:13. CHS staff would not have resigned had the Youngs returned and did not feel that the Youngs had an effect on morale at Sather. *See id.*

A reasonable juror could likely conclude that the Youngs engaged in protected activity under the False Claims Act and were terminated because they engaged in protected activity. Therefore, the False Claims Act Retaliation claim should proceed to trial.

Respectfully submitted,

/s/ Nicholas Woodfield

Nicholas Woodfield, Esq., VSB # 48938

R. Scott Oswald, Esq., VSB # 41770

The Employment Law Group, P.C.

888 17th Street, NW, Suite 900

Washington, D.C. 20006

(202) 261-2812

(202) 261-2835 (facsimile)

nwoodfield@employmentlawgroup.com

soswald@employmentlawgroup.com

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on January 8, 2016, I will electronically file the foregoing with the Clerk of the Court using the CM/ECF system, which will then send a notification of such filing to the following:

Carlos M. Recio, Esq.  
Virginia Bar No. 24572  
1016 7th Street, SE  
Washington, DC 20003  
crecio@reciolaw.com  
Counsel for Defendant CHS Middle East, LLC

John K. Train, IV, Esq.  
Georgia Bar No. 715267  
Weinberg, Wheeler, Hudgens, Gunn & Dial, LLC  
3344 Peachtree Road, NE, Suite 2400  
Atlanta, Georgia 30326  
JTrain@wwhgd.com  
Counsel for Defendant CHS Middle East, LLC

/s/ Nicholas Woodfield  
\_\_\_\_\_  
Nicholas Woodfield