

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,
ex rel. MICHAEL LINDLEY,
3209 13th Street, NW
Washington, D.C. 20010,

and

MICHAEL LINDLEY,
3209 13th Street, NW
Washington, D.C. 20010,

Plaintiffs,

v.

THE GALLUP ORGANIZATION,
901 F Street, NW
Washington, D.C. 20004,

Defendant.

FILED UNDER SEAL

Case: 1:09-cv-01985
Assigned To : Sullivan, Emmet G.
Assign. Date : 10/21/2009
Description: General Civil

JURY TRIAL DEMANDED

COMPLAINT AND JURY DEMAND
(False Claims Act, 31 U.S.C. §§ 3729 *et seq.*, and Common Law)

Preliminary Statement

This complaint alleges that Gallup – the company that promotes itself as “the most trusted name in polling” -- and its management have been defrauding the United States Government in a variety of ways, including knowingly providing false information to the Government during negotiations for fixed-price contracts, knowingly mischarging the Government by billing labor to a cost-based contract when the labor was actually performed to meet requirements on other fixed-price contracts, and obtaining contracts through improper

influence. Moreover, when Gallup employee Michael Lindley, after months of trying unsuccessfully to get his superiors to stop the misconduct, stated that he would have to consider reporting the fraudulent conduct to the Department of Justice, Gallup's chief counsel immediately fired Lindley and told him: "When you start talking about going to the Department of Justice, I don't trust you anymore." Plaintiff Michael Lindley, by the undersigned counsel, brings the *qui tam* claims in this lawsuit on behalf of and in the name of the United States of America, and brings the retaliatory discharge claims in this lawsuit on his own behalf, and alleges:

JURISDICTION AND VENUE

1. Counts I and II are civil actions by Plaintiff Michael Lindley, acting on behalf of and in the name of the United States, against Defendant Gallup under the federal False Claims Act, 31 U.S.C. §§ 3729-3733. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1345, and 31 U.S.C. § 3732(a).

2. Count III is a civil action by Plaintiff Michael Lindley against Defendant Gallup under the "whistleblower protection" provision of the federal False Claims Act, 31 U.S.C. § 3730(h). This Court has jurisdiction pursuant to 28 U.S.C. § 1331, and 31 U.S.C. §§ 3730(h) and 3732(a).

3. Count IV is a civil action by Plaintiff Michael Lindley against Defendant Gallup under the common law of the District of Columbia. This Court has supplemental jurisdiction over this claim pursuant to 28 U.S.C. § 1367.

4. This Court has personal jurisdiction over the Defendant pursuant to 31 U.S.C. § 3732(a), because the Defendant is located and transacts business in this judicial district.

5. Venue is proper in this judicial district pursuant to 31 U.S.C. § 3732(a), because the Defendant is located and transacts business in this judicial district, and some of the alleged acts proscribed by 31 U.S.C. § 3729 and § 3730(h) occurred in this judicial district.

6. None of the allegations set forth in this Complaint is based on a public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or General Accounting Office report, hearing, audit, or investigation, or in the news media.

7. Plaintiff Michael Lindley has direct and independent knowledge, within the meaning of 31 U.S.C. § 3730(e)(4)(B), derived through his employment with the defendant, of the information on which the allegations set forth in this Complaint are based, and he has voluntarily provided the information to the Government prior to the filing of this Complaint and prior to any public disclosures of the allegations or transactions set forth herein.

PARTIES AND OTHER RELATED PERSONS

8. Plaintiff Michael Lindley (“Relator” or “Plaintiff”) resides in Washington, D.C. From February 24, 2008, until July 24, 2009, the Defendant employed Relator as its Director of Client Services. During that time, Relator learned about the conduct set forth herein. Relator’s performance record with Defendant was exemplary. Defendant terminated Relator’s employment immediately after he complained to his supervisor about Defendant’s violations of the False Claims Act and stated that he was considering reporting these matters to the Department of Justice.

9. Defendant The Gallup Organization (“Gallup”) is a privately held company with its world headquarters located at 901 F Street, NW, Washington, D.C. 20004. For more than 70 years, Gallup has provided opinion polling and other consulting services. Gallup received more

than \$300 million of annual revenues in the calendar year 2008, much of which was from contracts to perform services for various agencies of the United States Government. The Chairman of the Board, President, and Chief Executive Officer of Gallup is Jim Clifton. Gallup's Chief Counsel is Steve O'Brien.

10. The United States Department of the Mint ("Mint"), part of the Department of Treasury ("Treasury Department"), is an agency of the United States, responsible for entering into and administering contracts for the procurement of services related to the minting of United States coins.

11. The United States Passport Agency ("Passport Agency"), part of the Department of State ("State Department"), is an agency of the United States, responsible for entering into and administering contracts for the procurement of services.

12. The United States Army ("Army"), United States Air Force ("Air Force"), and United States Navy ("Navy"), parts of the Department of Defense ("DOD"), are agencies of the United States, responsible for entering into and administering contracts for the procurement of services.

13. The Federal Emergency Management Agency ("FEMA"), part of the Department of Homeland Security ("DHS"), is an agency of the United States responsible for entering into and administering contracts for the procurement of services.

14. The Substance Abuse and Mental Health Services Administration ("SAMHSA"), part of the Department of Health and Human Services ("DHHS"), is an agency of the United States responsible for entering into and administering contracts for the procurement of services.

15. The United States Department of Energy ("DOE") is an agency of the United States responsible for entering into and administering contracts for the procurement of services.

16. The United States National Highway Traffic Safety Administration (“NHTSA”), and the Federal Aviation Administration (“FAA”), parts of the Department of Transportation (“DOT”), are agencies of the United States responsible for entering into and administering contracts for the procurement of services.

THE FRAUDULENT CONDUCT

17. Gallup compensated its employees based, in part, on the “gross margin” generated by projects for which the employees were responsible. Under Gallup’s pay-for-performance system, known as “FORMAX,” certain Gallup employees who worked on a project, including the responsible partner (*i.e.*, salesperson) and the project director, received incentive compensation based on the project’s “gross margin.”

18. At Gallup, the gross margin of a project was determined by taking the ratio of the project’s total costs to its total revenues (*i.e.*, total costs/total revenues), and then subtracting that ratio from 1. For example, if Gallup’s total costs for a project were \$420,000, and its total revenues were \$1,200,000, then the ratio of costs to revenues would be $420,000/1,200,000$, or 0.35 (*i.e.*, 35%). The gross margin of the project would be $1 - 0.35$, or 0.65 (*i.e.*, 65%).

19. Gallup typically paid its partners two percent of a project’s gross margin as the partner’s incentive compensation. Accordingly, on a \$1,000,000 contract with a gross margin of 70%, the partner would typically be paid a \$14,000 bonus. If a project’s gross margin fell below 55%, a partner would not only receive no FORMAX compensation; the partner would be penalized. This compensation system gave Gallup partners an incentive to take steps to raise the revenues and/or lower the costs on projects, thereby increasing the projects’ gross margins.

A. Defective Pricing

20. Gallup is a party to numerous “sole source” contracts with Government agencies, *i.e.*, contracts where Gallup has been selected to provide services to the Government agency without competitive bidding, and the price of the services is determined based on a negotiation. In these situations, the Government and Gallup negotiate a fixed contract price based on information that Gallup provides to the Government. During the negotiations, Gallup is required to provide the Government with the factual basis, known as the “cost and pricing data,” on which Gallup bases its estimated costs of providing the services promised, including the labor hours that will be required to perform the work in question. Under the Truth in Negotiations Act (“TINA”), 10 U.S.C. §2306a, Gallup is required to certify that the cost and pricing data Gallup provides to the Government is current, accurate, and complete. *See also* 41 U.S.C. 254b; FAR 2.101. The cost and pricing data, along with the company’s certification of its accuracy and completeness as well as related representations, are material to the Government’s decision whether to award a contract to Gallup and, if so, at what price. When a company submits false cost and pricing data in violation of TINA, the company engages in misconduct that is commonly known as “defective pricing.” A company that knowingly engages in defective pricing is also violating the False Claims Act.

21. Gallup has performed polling services for more than 70 years. In general, when Gallup needs to estimate the amount of time it will take to provide a particular service that involves polling and interviewing people, Gallup has a large store of factual data from which Gallup can make a very accurate estimate. For the specific contracts described herein for which Gallup was required to estimate the number of hours it would take to perform the services, Gallup usually could look to historical data on those specific types of contracts, from which

Gallup could deduce a very accurate estimate. In addition to relying on historical data to determine the hours that would require to complete a task, Gallup also could rely on mathematical formulas that proved highly accurate.

22. As described in more detail below, despite having a large quantity of historical data and mathematical formulas from which it can accurately estimate the amount of hours required to perform specific tasks, Gallup routinely inflates its estimates of the number of hours required to perform the tasks, frequently inflating its estimates by a multiple of two or more. At the same time Gallup employees cause the submission of these inflated estimates to the Government for the purpose of obtaining an inflated contract price, these very same Gallup employees submit *accurate* estimates to Gallup internally for the purpose of determining the contract's gross margin, which is an important factor in determining the employees' overall compensation. The result is that while the Government overpays for Gallup's services in the form of a falsely inflated contract price, Gallup employees earn larger bonuses because the gross margin on the contract grows in proportion to both the larger contract price and lower actual costs.

23. Gallup has been awarded a contract by the U.S. Mint, worth approximately \$2,000,000 per year, to conduct market research to identify likely purchasers of newly issued coins and how best to reach them. The contract was awarded as a single-award (*i.e.*, sole source) Indefinite Delivery, Indefinite Quantity ("IDIQ") contract. After the Government awarded the contract to Gallup, whenever the U.S. Mint needed market research it would forward to Gallup a task order request. Gallup would then write an abbreviated technical proposal and submit a detailed budget to the U.S. Mint. The budget would show a breakdown of the project on a task-by-task basis, setting forth the labor categories required to complete the work, the applicable

labor rate (containing direct labor, overhead and fringe benefits, General and Administrative costs, and profit) for each labor category, and the number of hours needed per labor category. The Government would rely on this budget detail in order to justify Gallup's price and assess its cost-reasonableness. Because the contract was a sole source contract, the Government had no competing bids against which it could evaluate the reasonableness of Gallup's pricing or costs, and relied instead on the accuracy of Gallup's cost and pricing data.

24. Whenever the Mint needed work under the contract, Sameer Abraham, the Gallup Senior Research Director and partner responsible for the contract, would submit a proposed budget to the Mint. In this budget, Gallup would inflate the number of hours required to complete the work, usually by a multiple of two or three times the number that would be justified by historical experience.

25. Meanwhile, Gallup would create an internal budget for the contract in Gallup's project management system. In this internal budget, Abraham would include a realistic number of hours required to complete the work in the contract, based on historical data. This realistic number would be used by Gallup for purposes of tracking the progress of the contract, and ultimately, determining the gross margin on the contract.

26. Based on the inflated numbers submitted by Abraham on behalf of Gallup, the Mint would agree to a fixed-price contract. The Mint would ultimately pay Gallup the inflated price, which had been based on Gallup's grossly inflated estimate of the hours it would take to complete the work.

27. Over the course of approximately 20 task orders, Abraham's internal estimates of the number of hours that would be required to complete the work would invariably turn out to be accurate. At the same time, the estimates of hours that Abraham would submit to the Mint, and

upon which the Mint would agree to a contract price, would invariably turn out to be two or three times the number of hours that were actually required to complete the work.

28. In the case of the Mint contract, Abraham asked the Relator to prepare some of the budgets using the inflated estimates for submission to the Mint. Abraham would subsequently take these same budgets and revise them to reflect the realistic, lower estimates of hours needed for use in developing Gallup's internal budgets and gross margins. When modifying the budgets in this manner, Abraham simply crossed out the inflated numbers of estimated hours that Gallup had submitted to the Government, and, in their place, wrote in the accurate numbers of estimated hours. An example of one such document, with the cross outs and replacement numbers written in Abraham's own hand, is attached hereto as Exhibit 1.

29. By inflating the number of hours in the proposal to the Mint, Abraham earned more money for Gallup, which got paid more under the contract because of the inflated estimate of hours. Abraham also earned additional compensation for himself, since his compensation was based, in part, on the huge gross margin that Gallup received under the contract.

30. Abraham has engaged in the same kind of misconduct in connection with Gallup contracts with the U.S. Passport Agency. Gallup has provided services to the U.S. Passport Agency under a contract worth \$2,700,000, and in May 2009 entered into negotiations with that agency for a 5-year sole source contract worth \$25,000,000. The contract required the contractor to conduct large nationwide surveys to be used in predicting the increase in the number of passport applications that would result from changes in border laws governing travel by United States citizens across the Mexican and Canadian borders. The Passport Agency asked Gallup to submit a justification for issuing a sole source contract, along with detailed pricing information that would be used to justify a contract price.

31. During negotiations with the Government for the Passport Agency contract, under Abraham's direction, Gallup submitted detailed budgets with vastly inflated hours. For internal budgeting and compensation purposes, however, Abraham provided Gallup with realistic -- and far lower -- estimates of the hours required to complete the tasks.

32. In or about mid-June 2009, when preparing the bid for the Passport Agency, Abraham instructed the Relator to use the same hours for this contract as Gallup had used in bidding for a prior contract. The Relator reviewed these hours and saw that they greatly exceeded the number of hours that Gallup had actually expended in performing the prior contract. The Relator then called Dawn Royle, a project manager, and confirmed with her that the numbers were inflated. Royle told the Relator that it would be more appropriate to input the hours that had actually been incurred on previous jobs than to use the inflated estimates that had been used to bid on earlier jobs, but which had nothing to do with the actual hours incurred.

33. On or about July 15, 2009, Abraham came into the Relator's office to talk about the bid on the Passport Agency contract. Abraham stated that he had just met with the Department of State and that the meeting had gone well. Abraham boasted that he had proposed a \$28,000,000 bid to the State Department; this figure was based on even higher levels of "estimated hours" than the already highly inflated estimated hours that Abraham had asked the Relator to prepare.

34. After submitting the bid based on these hours, Abraham instructed the Relator to lower the hours to a realistic level and input the realistic hours into Gallup's internal tracking system.

35. Almost immediately after these events, the Relator met with Gallup officials Kurt Cox and Julie Curd and informed them of what had occurred.

36. Abraham has engaged in the same kind of misconduct -- *i.e.*, knowingly submitting to the Government inflated estimates of the hours required to complete various tasks, and thereby inflating the contract price -- in connection with other Government contracts, including a Gallup contract with the NHTSA valued at \$2,000,000 per year.

37. Another Gallup partner, Timothy Blass, also engaged in defective pricing in connection with several Government contracts, but with a slight variation on Abraham's scheme. Formerly a cost accountant with a Government contractor, Blass was very familiar with Government cost accounting rules

38. Blass was Gallup's partner responsible for a contract with the Air Force Materials Command, valued at \$10,000,000 over 5 years. After ascertaining from the Government's contracting officer the maximum price the Government would be willing to pay for the work, Blass instructed the Relator to prepare a budget for the contract using a method that is known as "back-in pricing." Blass told Relator to determine the number of hours for each labor category not on the basis of Gallup's knowledge of the hours that would most likely be required to complete the work, but instead, on the basis of the number of hours that Gallup could bill for the contract to reach the maximum allowable price. In other words, Blass worked backwards from the price the Government was willing to pay, fabricating "estimates" of labor hours that would justify that price.

39. Unlike Abraham, Blass would initially instruct Relator to prepare an internal budget that had the same estimate of labor hours that was used in the proposal submitted to the Government. After Gallup started performing the contract, however, Blass would instruct the Relator to start reducing the number of hours in the internal budget to reflect the number of hours actually required to complete the task.

40. Blass engaged in similar misconduct involving “back-in pricing” on other Government contracts, including a subcontract with Battelle National Labs (under a prime contract with the Department of Energy) worth \$4,000,000 over five years; a subcontract with Stanford Research Associates (“SRA”) (under a prime contract with FEMA) worth \$12,000,000 over five years; a contract with the FAA worth \$8,500,000; and other Government contracts, including one with the U.S. Navy. With respect to each of the subcontracts, Blass knew that the projects were being paid for by the federal government, and he caused Gallup to present invoices to the prime contractors with the specific intent that these invoices would be passed on to, and paid by, agencies of the United States Government.

B. Shifting Costs from Fixed-Price to Cost-Plus Contracts

41. Abraham is also the partner responsible for a Gallup contract with SAMHSA, part of DHHS, to provide consulting services in connection with a study on bullying and teen suicide. The contract is a cost-plus contract valued at \$10,000,000 over a five-year period. Under this contract, Gallup submits invoices to DHHS in which it sets forth, in detail, the actual hours and costs incurred on the contract. Under this contract, Gallup can bill up to a contractually-specified number of hours, receiving compensation from the Government for each hour billed. However, Gallup has in reality managed to perform the specified work in fewer hours than the maximum, compensable hours specified in the SAMHSA-DHHS contract. To enable Gallup nonetheless to bill DHHS the maximum amount of hours for which the contract would provide compensation, Abraham has manually removed hours incurred on *other* contracts, which are fixed-price contracts, from the time records for those projects and, instead, falsely billed the hours to the cost-plus contract with SAMHSA. Abraham has stated in the Relator’s presence

that he has submitted these falsified records to the Government so that Gallup is not “leaving money on the table.”

42. By engaging in this scheme, Abraham benefits in two different ways. First, by lowering the number of man-hours attributed to Gallup’s fixed-price contracts, Abraham reduces the apparent cost of performing those contracts, thereby increasing the apparent gross margin – and his own compensation -- on those contracts. Also, because Gallup bills DHHS for “work” that wasn’t actually performed on the SAMHSA contract, Gallup is paid additional revenues on that contract without incurring any real additional costs, which increases the gross margin (and again Abraham’s compensation) on the SAMHSA contract as well.

43. Because of this scheme, Gallup not only gets paid for additional labor “costs” that were not actually incurred, but also earns inflated profits in the form of “award fees” from DHHS. These incentives, which are designed to encourage contractors to meet or exceed contract criteria, are calculated by the awarding agency based on a percentage of total costs.

44. In addition to shifting costs from fixed price contracts to the cost-plus SAMHSA contract, Abraham improperly upgraded the labor categories and thus hourly rates for specific individuals working on the contract, resulting in higher labor charges being billed to DHHS. Abraham would not upgrade the labor categories for these individuals for Gallup’s internal billing purposes, which resulted in Gallup billing the Government much higher rates for these individuals than Gallup would use in its own tracking system. Abraham also engaged in this practice of improperly upgrading labor categories and rate structures in connection with bids submitted on other Government contracts, including two additional contracts with SAMHSA. In addition, Abraham would sometimes use different hourly rates for the same labor categories in connection with different bids on Government contracts.

45. As early as February 2009, several principals of Gallup became aware of this cost-shifting scheme, including Julie Curd, the Government Division manager; Mary Yukiatis, the SAMHSA project manager; and Holly Alger, the Contract Administrator for the SAMHSA project. Gallup conducted a review of the invoices submitted to DHHS, during which it confirmed that Abraham had been switching hours for multiple people involved in the SAMHSA project. As a result of this review, Gallup decided to remove Abraham's ability to manually adjust the hours attributed to projects, and to make sure that new invoices reflected the correct amounts of hours. However, Gallup decided not to report anything to the Government about its prior misconduct in connection with the project. On numerous occasions, Yukiatis voiced her concern to partners and management about possible fraud and expressed the view that Gallup was violating the law. Her concerns were ignored.

C. Unlawful Conflicts of Interest

46. In or about March 2009, Gallup was awarded a \$15 million contract by the U.S. Army's Joint Contracting Command in Baghdad, Iraq, with two additional option years at \$15 million per year, to provide polling and focus group services within Iraq. During the process of procuring this contract, Gallup exercised undue influence over the award process, actually writing the Request for Proposal ("RFP") that the Army's contracting officer issued, and which Gallup answered with a proposal that was tailor-made to match the request it had written.

47. Gallup originally wrote the RFP so the contract could be awarded only to a company with characteristics – for example, 70 or more years of polling experience – that were unique to Gallup. The RFP was subsequently revised so that the contract could be awarded to a company with 10 or more years of polling experience, but even under the revised requirements, Gallup's authorship of the proposal gave it a great competitive advantage over any other bidder.

In a weekly meeting at Gallup involving Government Division manager F. Warren Wright, Chris Stewart, and others, Wright and Stewart joked that they had performed a word-count comparison between the RFP written by Gallup and the one released by the Army, and had found that the two documents were identical. Stewart also indicated that someone within the Government had tipped off Gallup to pricing information that enabled Gallup to lower its bid below any competition. They specifically asked the Relator not to say anything about these matters to Gallup's legal counsel.

48. Relator has been told that Gallup has been substantially inflating the costs incurred on the contract, marking up subcontractor costs by 100 percent before invoicing the Army. All of the actual data collection under the contract is performed by an Iraqi subcontractor, Asharq, using local Iraqis. Ashark employees enter all of the results into a database and then transfer the data to Gallup for analysis. Gallup devotes minimal time to analyzing the data before transmitting a report to the Army. Nonetheless, Gallup's profit margin on the contract is nearly 100 percent. This Army contract is the most profitable contract in the history of Gallup, accounting for a substantial percentage of Gallup's overall profits in the period since the company won the contract. Gallup has a similar but smaller contract in Afghanistan.

49. Gallup also contracted with the Government in the face of a clear conflict of interest in securing work from FEMA. During Gallup's successful effort to win the a FEMA contract valued at \$12,000,000 over five years, Gallup employees simultaneously were engaging in discussions with a high-level FEMA employee, Timothy Cannon, who had played a role in the award of the contract, concerning a potential job with Gallup. Although Gallup has performed this work under a \$12 million, five-year subcontract with Stanford Research Associates (SRA), SRA is a pre-approved contractor that merely serves as a go-between between FEMA and

Gallup, and does not actually perform any work in connection with the services provided by Gallup.

50. The Relator has heard that Timothy Blass, with the support of Gallup's then-Managing Partner of the Government Division, director F. Warren Wright, promised Cannon a position at Gallup if Gallup was successful in winning the subcontract. Gallup was awarded the subcontract, and several months later, Gallup offered Cannon a position at Gallup as a partner.

51. When Relator learned that Cannon had been offered the position and that Cannon had played a role in the award of the FEMA contract, Relator immediately reported his concerns to Julie Curd and another Gallup employee, Kirk Cox. Gallup then revoked the offer of employment to Cannon a few weeks before he was scheduled to start working at Gallup.

52. Julie Curd, who replaced Wright as manager of the Government Division, told the Relator that Wright knew this conduct was illegal because he had previously been caught and reprimanded for offering jobs to other Government employees while Gallup was attempting to win contracts from their respective agencies.

53. The Relator also learned that, in its invoices to FEMA, SRA has been marking up Gallup's work by an excessive amount -- as much as 40% over Gallup's invoiced price -- despite the fact that SRA is simply functioning as a go-between that performs no substantive work on the contract.

54. Gallup's principals are fully aware of the misconduct alleged by Relator, and they have credible evidence that this misconduct has in fact occurred. Nonetheless, Relator is informed and believes that Gallup has not self-reported its misconduct to Government officials, despite Gallup's legal obligation to do so.

DEFENDANT'S WRONGFUL DISCHARGE OF PLAINTIFF

55. On February 24, 2008, Plaintiff started work at Gallup as Director of Client Services. This was a new position at Gallup that involved developing all new Government proposals, and which gave Plaintiff a perspective on all of Gallup's bidding and pricing activities involving Government contracts. Plaintiff initially reported directly to F. Warren Wright, who was the managing partner in charge of Gallup's Government Division.

56. In or about April 2008, Plaintiff first began to observe what he reasonably believed to be defective, falsely inflated pricing of contracts. He observed Abraham putting in one level of hours for purposes of preparing a bid for Government work, and then, before the project was registered internally in Gallup's system, reducing the numbers of hours for Gallup's internal purposes. Plaintiff also observed that, once Gallup began performing the work, the actual hours worked matched almost exactly the level that the partner had estimated for Gallup's internal purposes, a significantly lower level than the hours on which Gallup had based the bid for the Government.

57. Plaintiff promptly reported this activity and expressed his concerns about the same to F. Warren Wright, the Managing Partner for the Government Contracts Division. Wright dismissed Plaintiff's concerns, telling him that he did not understand Government contracting.

58. In or about September 2008, Gallup began to implement a new set of compliance procedures related to its Government contracts. Plaintiff attended a series of meetings to discuss compliance issues. During this time period, Plaintiff informed Gallup managers that he had observed what he now recognized to be defective, falsely inflated pricing.

59. During late 2008 or early 2009, Plaintiff attended a week-long training session on compliance issues. In or about January 2009, Plaintiff met with Elaine Cardenas, Gallup's Business Development Manager, and told her about what he had observed concerning defective pricing. Cardenas told Plaintiff that she had brought up billing problems in the past, but had always lost that battle to the partners. Cardenas suggested that Plaintiff bring his concerns to the attention of Julie Curd, who was the director of operations for Gallup's Government Division.

60. Shortly afterwards, Plaintiff met with Curd. Plaintiff discussed in detail all the fraudulent activities he had observed and who had been involved. Plaintiff also showed her some examples where Abraham had used one set of hours when submitting a Government bid, and a more realistic, lower set of hours for purposes of Gallup's internal tracking system. Curd told Plaintiff she had been suspicious of this kind of activity for some time. She asked Plaintiff to gather more documentation related to his claims, and scheduled a follow-up meeting with Plaintiff and other Gallup officials.

61. In or about February 2009, after a meeting with high-level Gallup officials, Plaintiff was instructed that he should not confront any partner about suspected wrongdoing, and that he should continue to follow the partners' instructions even if he were asked to prepare documentation that he considered to be inaccurate. Plaintiff was told that if he were asked to assist anyone with something he believed was wrong, he was to comply with the request and report the matter either to Curd or to company legal counsel.

62. After Plaintiff received these instructions, he observed over the next several months that Gallup's practice of falsely inflating prices was getting worse rather than better, and he continued to bring these matters to the attention of Curd. Curd told Plaintiff that she had been

proposing reforms to Gallup's Executive Committee but had been meeting intense resistance. She said the committee considered her to be an "extremist."

63. During this same time period between February and July 2009, Plaintiff learned that Wright, the Government Division Manager, was being accused of racial and sexual discrimination at Gallup. Wright was asked to leave his position as Government Division Manager and, instead, to take on a position where he would only be managing other men. Curd replaced Wright as Government Division Manager. During this time period, Plaintiff became increasingly concerned that Gallup appeared unwilling to address any of his compliance concerns.

64. Based on his outstanding performance during his first year at Gallup, Plaintiff was awarded the maximum pay raise of the employees who were in his "entering class," and his employment evaluations stated that his performance was outstanding.

65. On July 23, 2009, Plaintiff met with Curd and again expressed his concerns about Gallup's overcharging on Government contracts. Plaintiff specifically expressed his concern about a Government contract where Gallup was submitting a bid for approximately \$25,000,000 when, in reality, Gallup knew it would only incur hours that would support a bid of approximately half that amount. Plaintiff specifically stated that he observed the overbilling of contracts not only to be persisting, but to be getting worse. He further told Curd that if Gallup was not going to report these issues to the Government, then he would report them to the Department of Justice himself. Curd stated that she also was frustrated and that the Executive Committee were "hypocrites." However, Curd encouraged Plaintiff not to report the matters externally, but instead, to keep working with Gallup to help bring about change internally.

66. When Plaintiff next came into work the following day on the afternoon of July 24, 2009, he received a voicemail from Curd telling him to see her in her office immediately. In her office, Curd told Plaintiff that Gallup was terminating his employment effective immediately. Curd said this was not her decision, but rather was the decision of Gallup's Chief Counsel, Steve O'Brien. Plaintiff requested a meeting with O'Brien.

67. An hour after he was terminated by Gallup, Plaintiff met with O'Brien and asked O'Brien why he was being fired. O'Brien first claimed it was for performance reasons, which Plaintiff responded was unlikely given that Gallup had lauded him for his outstanding performance during his first year. O'Brien next claimed Gallup was firing Plaintiff because he had supposedly refused a request to retrieve some documentation from Gallup's computer system to assist Gallup in responding to a procurement ethics survey. Plaintiff responded that he had in fact done everything he could to find such documentation, but that he found that the documentation had been deleted from Gallup's computer system, and he had immediately informed his superiors of that fact. Finally, O'Brien admitted unambiguously the real reason that Gallup had fired Plaintiff, stating: "When you start talking about going to the Department of Justice, I don't trust you anymore."

COUNT I: Knowingly Presenting False Claims
(31 U.S.C. § 3729(a)(1) (2008), § 3729(a)(1)(A) (2009))

68. Plaintiff re-alleges and incorporates the allegations contained in paragraphs 1 through 67, as if fully set forth herein. This Count is a civil action against Defendant for violating 31 U.S.C. § 3729(a)(1) (2008) or, alternatively, 31 U.S.C. § 3729(a)(1)(A) (2009), to the extent that this provision may apply to conduct that preceded its enactment on May 20, 2009.

69. In connection with numerous Government contracts, Defendant has knowingly presented, or caused to be presented, false claims for payment to officials or employees of the

United States Government. The false claims include all claims that Gallup has submitted to the Government under contracts that Gallup fraudulently induced the Government to award based on certified cost or pricing data that was defective under the Truth in Negotiations Act. The false claims also include all claims on which Gallup has falsely sought reimbursement for labor costs incurred on contracts other than the government contract to which the labor was being billed. Finally, the false claims include all claims that Gallup has submitted under contracts that it obtained through improper influence or other related misconduct.

70. Because of the Defendant's conduct under this Count, the United States has suffered actual damages of at least \$10 million.

COUNT II: False Statements or Records
(31 U.S.C. § 3729(a)(2) (2008), § 3729(a)(1)(B) (2009)

71. Plaintiff re-alleges and incorporates the allegations contained in paragraphs 1 through 70, as if fully set forth herein. This Count is a civil action against Defendant for violating 31 U.S.C. § 3729(a)(2)(2008) or, alternatively, 31 U.S.C. § 3729(a)(1)(B)(2009), to the extent that this provision may apply to conduct that preceded its enactment on May 20, 2009.

72. In connection with numerous Government contracts, Defendant has knowingly made or used, or caused to be made or used, false statements for the purpose of getting false or fraudulent claims paid or approved by the Government. Defendant has made or used these false statements, or caused them to be made or used, with the specific intent to get paid by the United States Government. These false statements include, among other things, the inaccurate "cost and pricing data" that Gallup has submitted to the Government as an estimate of its costs and prices to perform the government projects discussed herein. The false statements also include Gallup's certifications of the accuracy and completeness of this cost and pricing data, along with other

oral or written representations related to these items, all of which were material to the Government's decisions to make payment on Gallup's false claims.

73. Because of the Defendant's conduct under this Count, the United States has suffered actual damages of at least \$10 million.

COUNT III: Violation of False Claims Act Anti-Retaliation Provision
(31 U.S.C. § 3730(h) (2009))

74. Plaintiff re-alleges and incorporates the allegations contained in paragraphs 1 through 73, as if fully set forth herein.

75. During the course of his employment, Plaintiff investigated numerous instances where he reasonably believed that Defendant was violating the False Claims Act. Plaintiff made numerous reports to his supervisors and other Gallup officials regarding Defendant's fraudulent conduct and violations of the False Claims Act, and he repeatedly attempted to stop Defendants' violations of the False Claims Act. Finally, Plaintiff told his direct supervisor, Julie Curd, that he intended to report Defendant's violations to the Department of Justice. Curd relayed this information to Gallup's Chief Counsel, Steve O'Brien.

76. Defendant was aware that Plaintiff had engaged in activities in furtherance of a potential action under the *qui tam* provisions of the False Claims Act. Defendant was also aware of Plaintiff's efforts to stop violations of the False Claims Act.

77. Because Plaintiff was engaging in activities that are protected under the False Claims Act's anti-retaliation provision, 31 U.S.C. § 3730(h), Defendant terminated Plaintiff's employment. Immediately after firing Plaintiff, O'Brien explained the reason for Plaintiff's termination: "When you start talking about going to the Department of Justice, I don't trust you anymore."

78. As a direct and proximate result of the foregoing, Plaintiff has lost the benefits and privileges of employment, and has suffered additional economic and non-economic damages, including severe emotional anguish and irreparable, continuing to harm his career. Plaintiff is entitled to all relief necessary to make him whole.

COUNT IV: Wrongful Termination in Violation of Public Policy

79. Plaintiff re-alleges and incorporates the allegations contained in paragraphs 1 through 78, as if fully set forth herein.

80. Plaintiff reported to Mr. Wright, Ms. Curd, and other responsible managers and officials of Gallup his reasonable belief that Gallup was engaging in fraudulent billing practices in violation of various laws, including the False Claims Act. Such conduct violated the public policy of the District of Columbia as embodied in the False Claims Act, 31 U.S.C. §§ 3729–3733, and the District’s common law of fraud.

81. Defendant retaliated against Plaintiff for reporting these violations by terminating his employment.

82. In terminating the employment of Plaintiff, Defendant acted with malice, or with reckless indifference to Plaintiff’s legal rights.

83. As a direct and proximate result of the foregoing, Plaintiff has lost the benefits and privileges of employment and has suffered additional economic and non-economic damages, including severe emotional anguish and irreparable, continuing to harm his career.

PRAYER FOR RELIEF

Plaintiff demands judgment against the Defendant as follows:

a. That by reason of the violations of the False Claims Act, this Court enter judgment in favor of the United States and against the Defendant in an amount equal to three times the

amount of damages the United States Government has sustained because of Defendant's actions, plus a civil penalty of not less than Five Thousand Five Hundred Dollars (\$5,500.00) and not more than Eleven Thousand Dollars (\$11,000.00) for each violation of 31 U.S.C. § 3729;

b. That the Relator, as a *qui tam* Plaintiff, be awarded the maximum amount allowed pursuant to Section 3730(d) of the False Claims Act or any other applicable provision of law;

c. That, by reason of Defendant's violation of the Employee Protection Provision of the False Claims Act, 31 U.S.C. § 3730(h), judgment be entered in favor of Plaintiff Lindley and against Defendant;

d. That, by reason of Defendant's wrongful discharge of Plaintiff in violation of public policy, judgment be entered in favor of Plaintiff Lindley and against Defendant;

e. That Plaintiff Lindley be awarded double his back-pay losses under the Employee Protection Provision of the False Claims Act, 31 U.S.C. § 3730(h), plus front pay, interest, costs, and attorneys' fees, and special damages for emotional distress and harm to his reputation;

f. That Plaintiff Lindley be re-instated to his former position at Gallup, with all applicable raises;

g. That Plaintiff Lindley be awarded compensatory damages, in an amount to be proven at trial, based on Defendant's wrongful discharge of Plaintiff in violation of public policy;

h. That Defendant Gallup be ordered to pay punitive damages to Plaintiff Lindley, based on Defendant's wrongful discharge of Plaintiff in violation of public policy;

i. That Plaintiff Lindley be awarded all costs of this action, including reasonable attorney's fees and court costs; and

j. That Plaintiffs have such other relief as the Court deems just and proper.

JURY TRIAL DEMANDED

Plaintiff demands that this matter be tried before a jury.

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Attorneys for Plaintiff Michael Lindley

Dated: October 21, 2009

EXHIBIT 1

U.S. Department of Treasury
 U.S. Mint
 TM-HQ-07-C-0036
 Presidential \$1 Coin Market Research Services
TASK ORDER No. 24 22
 The Gallup Organization
 August 6, 2008

2008

8/22/08
 BA

SCOPE: 26 In-Person Focus Groups for Brand Identity
 Target 2 Focus Groups Per Site; Recruit 12 Per Session
 Sites = San Francisco, Denver, Philadelphia, Chicago,
 Cleveland, Atlanta, Boston, Los Angeles, Houston
 Special: CAC Research; FG Videotapes; Highlights Video
 CONTRACT TERMS : FIRM FIXED PRICE

Personnel	2008 Option 1 Hourly Rate	Task 1		Task 2		Task 3		TOTAL	
		Planning & Logistics Lists & Guides Profiling Research		Administer 26 Focus Groups & Videotaping Sessions		Draft & Final Reports Exec Briefings Highlights Video		Hours	Total
		Hours	Total	Hours	Total	Hours	Total		
Dr. Sameer Abraham, IDIQ Project Manager	\$226.62	14	\$3,173	16	\$3,626	16	\$3,626	46	\$10,425
Dr. Alison Simon, Task Order Project Manager	\$226.62	48	\$10,878	128	\$29,007	98	\$22,209	274	\$62,094
Denise Delahanty, Associate Project Director/ SC	\$226.62	4	\$906	168	\$38,072	16	\$3,626	188	\$42,605
Focus Group Coordinator	\$226.62	38	\$8,612	90	\$20,396	12	\$2,719	140	\$31,727
Andy Zukerberg, Assoc. Project Director	\$226.62	44	\$9,971	188	\$42,605	170	\$38,525	402	\$91,101
Dr. Manas Chattopadhyay, Senior Statistician	\$178.48								
Dr. Cheoleon Lee, Statistical Analyst	\$152.02								
Analysis & Reports	\$151.05	8	\$1,208			190	\$28,700	198	\$29,908
Database Administrator	\$152.02	145	\$22,043					145	\$22,043
Project Administrator	\$152.56	22	\$3,356	68	\$10,374	8	\$1,220	98	\$14,951
Programmers/Systems Analyst	\$91.19			48	\$4,377	245	\$22,342	293	\$26,719
Research Assistant	\$70.41								
Interviewers	\$45.44								
Transcription	\$85.98					118	\$10,146	118	\$10,146
Administrative Assistant	\$70.41	28	\$1,971	92	\$6,478	88	\$6,198	208	\$14,645
SUBTOTAL		351	\$62,149	803	\$155,523	971	\$140,264	2,125	\$357,906

0
 75
 36
 80 30
 90
 98
 40
 20
 160
 40 40
 24

Other Direct Costs (ODCs)				
Subcontractor: CAC Group		\$188,990		\$188,990
Focus Group Videotaping; Video Compilation & Editing		\$17,550	10,000	\$27,550
List Purchases & Usage Fees		\$14,887	3,000	\$17,887
Focus Group Recruitment		\$54,600	46,000	\$100,600
Focus Group Facilities, Refreshments, Misc.		\$40,300	35,000	\$75,300
Focus Group Incentives		\$31,800	25,000	\$56,800
Per Diem, Lodging, Misc.		\$3,864		\$3,864
Travel (Air & Ground)		\$11,940		\$11,940
SUBTOTAL		\$168,990		\$168,990
General & Administrative on ODCs	18.80%	\$31,770	\$29,918	\$5,599
<i>Note: No G&A applied to travel & per diem.</i>				
TOTAL		\$262,879	\$360,381	\$175,643
				\$798,903

40,000
 3,000
 10,000
 3,000
 46,000
 35,000
 25,000