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April 29, 2013

VIA ELECTRONIC MAIL

Donna Westfall
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Re: Representation before U.S. district court in reference to your *qui tam* claim under the False Claims Act ("FCA"), 31 U.S.C. §§ 3729-33, against Jim Barnts, *et al.*

Dear Donna:

The Employment Law Group ("TELG" or "the Firm") is pleased that you have asked us to represent you in litigating your *qui tam* claims against Jim Barnts, *et al* (collectively referred to as "Barnst"). We write to confirm the scope and terms of our agreement to represent you from this date forward.

As discussed, the False Claims Act ("FCA"), 31 U.S.C. §§ 3729-33, permits you, as a person with knowledge of Barnst's past fraud against the government, to sue on behalf of the government to recover civil penalties and other damages. If the suit is successful, you may receive a share of the government's recovery. We have discussed the pitfalls of an FCA prosecution. I ask you to carefully read Section 12 of this agreement, which describes these pitfalls with particularity.

1. Services to be Provided.

You have engaged TELG to represent you before U.S. district court in reference to your *qui tam* claims pursuant to the FCA against Barnst. Pursuant to Section 7 below, during the first thirty (30) days of TELG's representation, it will evaluate the viability of your potential *qui tam* claims before proceeding with the necessary steps to file such claims.

Except as otherwise provided in this letter agreement, TELG will represent you during the initial litigation of your claims before U.S. district court, provided the government chooses to intervene.

TELG does not agree, at this time, to represent you in any appeal or retrial of your case, should they become necessary. At such time, you and TELG will discuss the new terms and fee associated with continued representation.

TELG is not responsible for legal matters for which you have not specifically requested advice. If TELG has not agreed in writing to represent you in other legal matters, we shall have no obligation to do so. Specifically, TELG is not responsible for anything beyond the explicit scope of engagement as set forth in this letter agreement. The Firm has no duty to update you about any matter in which we may have previously advised or represented you.

2. Determination of Fees for Service.

- A. TELG will be entitled to a Fee if you receive a Monetary Award. A Fee is compensation for the time and services of TELG's attorneys and professional staff. A Monetary Award is any and all payments to which you become entitled - whether pursuant to a court order, a settlement, or otherwise - as a direct or indirect result of your *qui tam* claims. With the exception of Section 9F below, TELG will not charge you a Fee unless you receive a Monetary Award. TELG's normal hourly rates include \$450.00 per hour for principals' time, \$450.00 per hour for the firm's "of counsel's" time, between \$235.00 and \$285.00 per hour for the firm's associates' time, \$135.00 per hour for legal assistants' and investigators' time, and \$70 per hour for project assistants' time.
- B. Subject to Section 2A of this agreement, you agree to pay TELG a Contingent Fee to account for the risks involved in litigating this matter, such as the risk that we will not be paid. The Contingent Fee shall be 40% of the Net Award. The Net Award is any Monetary Award less any amount specifically awarded for attorneys' fees, litigation costs, and/or litigation expenses whether by court order, settlement, or otherwise.
- C. Subject to Section 2A, TELG is entitled to any attorneys' fees award, regardless of whether awarded by a court, required by statute, paid by Barnst pursuant a settlement, or otherwise.

3. Determination of Disbursements.

- A. TELG may incur on your behalf various Disbursements while representing you. Disbursements are any and all reasonably necessary costs and expenses of litigation. Disbursements that may be incurred include, but are not limited to, charges for serving and filing papers, courier and messenger services, recording and certifying documents, investigation fees, jury consultant fees, evaluation and witness fees, long-distance telephone and conference calls, facsimile charges, copying charges, document management expenses (such as CaseMap® and MerlinOne® software and services), on-line research charges (including Westlaw®), electronic evidence storage and retrieval charges, travel expenses, and significant excess postage charges (e.g.,

bulk document shipments). Experts retained in your case shall report exclusively to TELG. The fees charged by experts are expenses in the case.

However, TELG reserves the right to enter into an agreement with Local Counsel. Local Counsel would be an attorney(s) admitted to practice in the jurisdiction under which your claim may arise but in which TELG attorneys are not currently admitted. If TELG retains Local Counsel, we shall be responsible for compensating Local Counsel. TELG will pay for Local Counsel costs and expenses. Therefore, Local Counsel and related costs and expenses are excluded from the definition of Disbursements.

- B. TELG will advance Disbursements.
- C. TELG shall be entitled to reimbursement in full for Disbursements the Firm advances if you receive a Monetary Payment.
- D. Subject to Section 9F below, you shall not be responsible for reimbursing TELG for its Disbursements unless you receive a Monetary Award.
- E. TELG is entitled to any award of Disbursements (i.e., reimbursement of litigation costs and/or expenses) you receive - pursuant to a court order, settlement, or otherwise - as a direct or indirect result of your *qui tam* claims. To the extent such an award is insufficient to reimburse TELG for the total amount of Disbursements the Firm advanced on your behalf, or if no such award exists, TELG shall be reimbursed in full for such Disbursements from the Net Award, after the Contingency Fee is calculated.

4. Payment of Fees and Disbursements

- A. To secure payment of our fees and reimbursement of our Disbursements, you assign to TELG a lien on any Monetary Award you receive.
- B. To secure any balance you owe TELG, you grant us a security interest in any property that may come into our possession in the course of representing you on any matter. This means that if there should be a dispute as to what fees or expenses we are entitled to be paid, the amount in dispute will be kept in TELG's escrow account until the dispute is resolved. Furthermore, by signing this agreement you are authorizing TELG and our staff to act as your agent by endorsing, on your behalf, any financial instruments that we receive (in settlement of your case or otherwise) that are made jointly payable to you and another party, or made payable to you in your individual capacity. Also by signing this agreement, you are authorizing TELG to deposit any such instruments made payable to you, either jointly or individually, into our escrow account for a later distribution that will satisfy your obligations created by or incurred pursuant to this letter agreement.

- C. If you receive a Monetary Award in the form of a structured settlement or an award of future periodic payments, TELG's fees and any unpaid disbursements are to be paid from any initial lump-sum payment. If the initial lump-sum payment is insufficient to pay in full TELG's fees and any unpaid disbursements or if there is no initial lump-sum payment, the total amount of each periodic payment shall be paid to TELG until all fees and any unpaid disbursements are paid in full. Payments to you will begin only after TELG's fees and disbursements have been paid in full.
- D. By signing this letter agreement, you hereby assign (i.e., agree to pay over in the future) to TELG the above amounts due and owing regarding attorneys' fees and Disbursements payable under the FCA and consent to the payment of fees and disbursements directly to TELG.
- E. Notwithstanding any other provision of this letter agreement, if TELG must bring a claim against you to collect any fees or Disbursements that you fail to pay, you agree to pay TELG and our staff's hourly fees, according to the above fee schedule, and any reasonably necessary expenses to collect any outstanding balance. This includes any arbitration expenses and fees described below in Section 13.

5. Statements.

TELG will periodically send you a statement identifying all work performed relating to your claims and Disbursements incurred on your behalf.

6. Attorney/Client Cooperation.

TELG and our staff will keep you reasonably informed of the status of your *qui tam* claims. The Firm will promptly respond to all e-mails, voicemails, or other communications from you. The Firm will typically respond within one (1) business day of receipt of your communication, with the exception of extenuating circumstances, such as illness or trial.

Similarly, you will fully cooperate with TELG, our staff, and/or any experts and provide all the information they reasonably need to represent you. You will keep TELG informed of any change in your address or telephone number. You will respond to inquiries made by TELG, our staff, and/or any experts with true and complete responses to the best of your knowledge and understanding at the time you provide the response. You will not make any material misrepresentation or omission to TELG, our staff, and/or any experts. You will contact TELG promptly concerning new or changed information that pertains to the subject of this representation.

7. Initial Evaluation Period.

TELG will evaluate your *qui tam* claims during an Evaluation Period. The Evaluation Period is the first thirty (30) days after you sign and return this letter agreement. During the Evaluation Period, TELG will review and confirm the facts that support your *qui tam* claims, as

well as perform the necessary legal research and analysis to ascertain the appropriate legal strategy to prosecute your potential claims. This will include reviewing the necessary elements of each and every claim and any possible defenses that Barnst may have in response to your legal claims. Through the course of the Evaluation Period, you will meet in person, by telephone, or by videoconference, with TELG attorneys and a private investigator. The investigator will interview you and may interview potential witnesses to obtain additional corroborative evidence and generally to assess other circumstances that may affect your legal claims. TELG may also consult with lawyers not affiliated with the Firm in evaluating your claim. The expert consultants and lawyers with whom TELG may consult will preserve your confidences and secrets and will not disclose them further.

At the conclusion of TELG's evaluation, which may occur before the end of Evaluation Period, we will produce to you a written evaluation of your legal claims. Only after TELG completes our evaluation will the firm determine whether we are willing to file a lawsuit and litigate your legal claims against Barnst.

If the government elects not to intervene in this matter, you consent to TELG's withdrawal from the matter unless we choose to continue prosecuting your claim. In that event, TELG may submit to you a separate letter agreement that will cover the scope, fees, and other terms of continued representation. Please see Section 12 below for additional considerations regarding our representation in *qui tam* actions.

8. Commencement of Representation.

TELG's evaluation and representation will begin only when we receive a signed copy of this letter agreement. In order to protect your interests, it may be necessary for TELG to begin our work before receipt of a signed copy of this letter agreement and the retainer. You agree that TELG is entitled to be compensated for any reasonably necessary time and/or disbursements that we incur, or have already incurred, prior to receipt of your signed copy of the present letter agreement.

9. Right to Terminate Representation.

- A. You reserve the right to terminate this representation with or without cause, at any time. To terminate this representation, you must notify TELG in writing that you want to terminate our representation. When TELG receives your written notice of termination, we will stop all legal work on your behalf immediately.
- B. TELG reserves the right to terminate our representation at any time during the Evaluation Period for any reason or no reason, in TELG's sole discretion.
- C. TELG reserves the right to terminate our representation if the government declines to intervene in your *qui tam* claims.

- D. After the Evaluation Period's conclusion, TELG reserves the right to terminate our representation at any time if you commit a material breach of any term of this agreement; if you fail to cooperate or follow our advice on a material matter; or if there exists at any time any fact or circumstance that would render this continuing representation unlawful, unethical, or otherwise inappropriate.
- E. If TELG elects to terminate our representation, you will take all steps reasonably necessary and will cooperate as reasonably required to free us from any further obligation to perform legal services, including the execution of any documents necessary to complete our withdrawal from representation.
- F. If, for any reason, the representation is terminated pursuant to Section 9A or Section 9D of this letter agreement, you will become responsible for immediately compensating TELG for all Disbursements advanced by the Firm up to the date this provision. You will also be responsible for promptly reimbursing TELG for any fees and expenses necessary to effectuate our withdrawal of representation and closing of your file. Additionally, you agree that TELG will be entitled to – at the Firm's sole discretion – either:
 - 1. Immediate payment for all services provided by the Firm in the course of the representation up to the date this provision becomes applicable, including a Fee that shall be calculated by multiplying the hours TELG's attorneys and staff have expended on the representation by the standard hourly rates identified in Section 2A above; or
 - 2. The compensation provided for by Sections 2B and 2C above.

10. Work Papers, Etc.

All work papers and other materials that TELG creates during our representation are initially our own property. TELG will provide to you at your request: (1) any document in TELG's possession that you submitted to us; and (2) except as specified in this section, copies of any other materials for which you have specifically paid a fee after the firm's Evaluation Period. Such a request must be in writing, and TELG will provide you the requested documents within a reasonable time.

TELG will not provide you with any documents or internal communications relating to the firm's decision-making process on whether to represent you. By signing this letter agreement, you agree to waive any claim of ownership to these documents even if you have paid for the services that resulted in their production. At the conclusion of this representation you will be entitled to the Firm's file in this matter, with the exception of the internal documents discussed above. TELG will maintain this file for at least five (5) years after the conclusion of the matter, but at the end of that time, if you have not requested the file, TELG will be free to eliminate or destroy the documents.

TELG maintains its files electronically. By signing this letter agreement, you consent that the Firm may produce your file to you in its electronic form in response to a request for your file. If you are unable to access the electronic file we produce or if you require us to produce your file in paper form, you agree to reimburse TELG for the expense of converting your electronic file to paper form.

11. Waiver of Warranties.

TELG cannot and does not warrant or predict the final results of any matter.

TELG is not a tax firm, and we do not employ any tax lawyers. Thus, TELG does not, and cannot, make any representations as to the tax consequences of a monetary settlement or judgment in your favor. We advise you to seek separate tax counsel to review with you the tax consequences of any monetary judgment or settlement in your favor.

TELG and its attorneys do not practice criminal law, and we do not employ criminal defense lawyers. Thus, TELG does not, and cannot, make any regarding criminal liabilities you may incur. We advise you to seek separate criminal defense counsel to review with you any potential criminal issues.

12. Qui Tam Special Considerations.

Your *qui tam* claims actually belong to the federal government of the United States, and possibly one or more states. If the federal government or any state government exercises its right to take control of the case, that government's lawyers will act as lead counsel. The government also has the right to settle the case without your consent, so long as the court approves the settlement. There are instances, although generally rare, when the government refuses to pay the relator's share even when the relator's claim leads to a successful settlement or judgment against the defendant.

The government may also prosecute under criminal statutes, in which event the criminal fines levied by the Government may reduce the size of the settlement in the civil *qui tam* action.

Please know that the public disclosure of Barnst's fraudulent conduct (either by you or others), the filing of another FCA lawsuit making the same charges, or government action on the same matter before your lawsuit is filed might be grounds for the dismissal of your case. Specifically, if some other litigant has brought a similar action prior to your case being filed, your claim would be barred by the "first to file" rule described at 31 U.S.C. § 3730. Even if the "first-to-file" rule does not preclude your claim, the court (or U.S. Department of Justice) may require you to join your claim with the claims of other relators.

There is no guarantee that the U.S. Department of Justice will intervene on your behalf. In fact, the U.S. Department of Justice intervenes in less than 18% of *qui tam* cases. Even if the Government agrees to intervene, it is no guarantee that your suit will succeed. As you probably

suspect, if you are not completely truthful with the Government, the Government is unlikely to intervene on your behalf.

Finally, if the complaint does not allege fraud with specificity, including the details of the actual presentation of false or fraudulent claims to the Government, the court may dismiss the claim.

13. Fee Dispute Resolution.

You waive your right to file suit in court to resolve a dispute regarding the fees and/or Disbursements to which TELG is entitled. TELG waives its right to file suit in court to resolve a dispute regarding the fees and/or disbursements to which TELG is entitled.

If a dispute arises regarding the fees and/or disbursements to which TELG is entitled, you and TELG agree to submit such dispute to arbitration. Both parties expressly agree to participate in, and be bound by, the fee resolution procedure offered by the Attorney/Client Arbitration Board of Washington, D.C.. (For example, counseling and a copy of the Attorney/Client Arbitration Board (D.C.) rules are available through the Attorney/Client Arbitration Board staff, contact information for whom can be found at the following web portal: www.dcbbar.org/inside_the_bar/departments/attorney_client_arbitration_board/about.cfm.)

14. Entire Agreement.

This agreement constitutes the entire agreement between you and TELG. No oral representation, either by TELG or our staff will modify it, unless that representation is confirmed by TELG in writing and the writing specifically states that the writing is intended to modify this agreement.

15. Controlling Law.

This agreement shall be construed and enforced in accordance with the laws of the District of Columbia in effect at the time of such construction or enforcement, except the District of Columbia's choice of law statutes and doctrines. Furthermore, you agree that jurisdiction is appropriate in the District of Columbia for any dispute arising out of the interpretation of this agreement.

16. Binding Effect.

This letter agreement is meant to be a binding contract. It is therefore important that you understand it completely. If there is anything that you do not understand or you have any questions, please consult with TELG before you sign this letter agreement. You can also consult with an independent lawyer about the meaning of this document. If you sign the document, TELG will assume that you understand and agree to all of the terms contained herein.

Donna Westfall
April 29, 2013
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If the foregoing terms are acceptable, please sign and return one copy of this letter.
TELG looks forward to working with you.

Very truly yours,
The Employment Law Group, P.C.

By:

A handwritten signature in black ink, appearing to read "R. Scott Oswald". The signature is stylized with a large, bold "R" and a cursive "Scott Oswald".

R. Scott Oswald, Managing Principal

I understand and accept the terms of this agreement.

Donna Westfall

Date