**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLUMBIA**

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| **THERESA WESTON SAUNDERS** | ) | |
| | ) | |
| **Plaintiff,** | ) | |
| | ) | |
| **v.** | ) | **Civil Action No. 1:02-cv-1803 (CKK)** |
| | ) | |
| **DISTRICT OF COLUMBIA, *et al.*,** | ) | |
| | ) | |
| **Defendants.** | ) | |
| | ) | |

**PLAINTIFF'S OPPOSITION TO DEFENDANT DISTRICT OF COLUMBIA'S RENEWED MOTION TO DISMISS PLAINTIFF'S FEDERAL FALSE CLAIMS ACT RETALIATION CLAIM**

Defendant District of Columbia has filed a renewed motion seeking to dismiss as untimely Plaintiff Theresa Weston Saunders' claim that the district retaliated against her in violation of the Federal False Claims Act ("FCA"), 31 U.S.C. § 3729 et seq. As we show below, Defendant's motion must be denied because Ms. Saunders' claim was timely filed under the applicable statute of limitations.

## INTRODUCTION

On May 13, 2010, this Court issued an Order and Memorandum Opinion. As is relevant here, that Order and Memorandum Opinion directed the parties to propose a schedule for submission of supplemental briefing addressing the appropriate statute of limitations to be applied to Ms. Saunders' Federal False Claims Act retaliation claim. On August 24, 2010, the Court issued a Minute Order, inter alia "permit[ting] Defendants an opportunity to re-file a

dispositive motion" as to any contention the Plaintiff's FCA retaliation claim is subject to dismissal as time-barred.[1]

Although this Court's May 13 Memorandum Opinion noted a number of potentially applicable statutes of limitations, the District's Renewed Motion to Dismiss addresses only one, asserting that the Court should apply the one-year statute of limitations that was previously contained in the District of Columbia Whistleblower Protection Act ("D.C. WPA"), D.C. Code § 1-615.51 et seq. The District did not explain why it believes that other statutes of limitations are not applicable. As discussed in more detail below, the statute of limitations in the D.C. WPA is not properly applied to Ms. Saunder's FCA retaliation claim. Rather, the proper statute of limitations to be applied to that claim is the three-year "residual" limitations period established in D.C. Code § 12-301(8).

## ARGUMENT

### PLAINTIFF'S FEDERAL FALSE CLAIMS ACT RETALIATION CLAIM IS TIMELY

Pursuant to *Graham County Soil & Water Conservation District v. United States ex. Rel. Wilson*, 545 U.S. 409, 418 (2005), claims of retaliation under the Federal FCA are governed by the most closely analogous state limitations period. We demonstrate below that the one-year statute of limitations contained in the D.C. WPA, which Defendant District of Columbia asks

[1] Although this Court's May 13, 2010 Memorandum Opinion requested the parties to "address in their supplemental briefing whether application of the statute of limitations raises a challenge to the Court's jurisdiction," rather than a failure to state a claim (p. 23, n. 12), the Court's subsequent Order (Aug. 24, 2010) which not only expressly permitted the Defendant to file a renewed Motion to Dismiss with respect to the FCA statute of limitations, but also did not request briefing on the jurisdiction/failure to state a claim issue, appears to have removed that issue from the case. On that understanding, we have not briefed the issue–nor did Defendant in its Renewed Motion to Dismiss. If the Court still desires briefing on this issue, we will of course oblige.

this Court to apply, is not the most analogous state limitations period. Rather, the most analogous period for a Federal FCA retaliation claim is the three-year statute of limitations provided in D.C. Code § 12-301(8). That is the minimum limitations period applicable to retaliation claims under the D.C. False Claims Act, which is the most analogous state law claim to plaintiff's Federal FCA retaliation claim.

## I. The Statute of Limitations in the D.C. WPA Does Not Properly Apply to Plaintiff's Federal FCA Retaliation Claim

To determine the most closely analogous state limitations period, the court looks to (1) which state-law cause of action is most analogous to a Federal FCA retaliation claim and (2) whether the limitations period applicable to that cause of action comports with the policies underlying the federal statute. *North Star Steel Co. v. Thomas*, 515 U.S. 29, 34 (1995). Applying both of these factors, it is apparent that the one-year limitations period in the D.C. WPA is not appropriately applied to plaintiff's Federal FCA retaliation claim.

Notably – though not surprisingly – courts generally have not applied state whistleblower statutes' limitation periods to Federal FCA retaliation claims. Defendant District of Columbia, though urging the court to utilize such a period, has cited only a single decision where a court has done so. In *Hinden v. UNC /Lear Service, Inc.*, 362 F.Supp.2d 1203 (D. Haw. 2005), the court adopted the approach that defendant urges here, but provided little analysis to explain or support that choice. In contrast, the courts in both *United States ex rel. Smith v. Yale University*, 415 F. Supp.2d 58 (D. Conn. 2006) and *Campion v. Northeast Utilities*, 598 F. Supp.2d 638 (M.D. Penn. 2009) expressly rejected the defendants' attempts to have the court apply the limitations period provided in the state's whistleblower statute, based on careful analysis showing the lack of

analogy between state whistleblower statutes and Section 3730(h) of the Federal FCA.

Indeed, the federal statute to which the D.C. WPA is analogous is not the Federal False Claims Act, but rather the federal whistleblower statute, 5 U.S.C. § 2302(b)(8). *Wilburn v. District of Columbia*, 957 A.2d 921, 925 (D.C. 2008) ("This court has recognized that the federal whistleblower statute, 5 U.S.C. § 2302(b)(8), is instructive in interpreting similar state statutes, including the DC-WPA") (internal citations omitted).

As the *Campion* court noted, while a defendant's recourse to the state whistleblower statute's limitation period might have "some surface appeal," "the analogy ends at th[at] level of generality." *Campion*, 598 F. Supp.2d at 651. The Federal FCA's anti-retaliation provision has broad application, applying to *any* employee in *any* employee-employer relationship. *Campion*, 598 F.Supp.2d at 651; 31 U.S.C. § 3730 (h). But the D.C. WPA – like the Pennsylvania whistleblower statute that was rejected as an analogy in *Campion* – applies to a far more limited class of employees and employers. The D.C. WPA's scope of coverage is confined to those individuals who are former or current District employees or applicants for District employment. D.C. Code § 1-615.52 (3). Thus, the scope of coverage provided by the D.C. WPA is wholly distinct from – rather than analogous to – that of the FCA. "This severe limitation on the scope of the [state] Whistleblower Law precludes the conclusion that it provides the most closely analogous limitations period." 598 F. Supp.2d at 651.

In *Smith*, the defendant also attempted to have the court apply the state whistleblower statute's shorter limitations period to plaintiff's FCA retaliation claim. The court refused to do so, holding that FCA retaliation claims were properly governed by the state's three-year statute of limitations for wrongful discharge claims. The *Smith* court expressly rejected the defendant's bid

to impose a shortened limitations period on an FCA retaliation claim because there is nothing in the legislative history of the FCA's retaliation provision to "suggest[] that Congress intended these claims to proceed on an especially fast track, which it might have easily indicated in the statute had it cared to." *Smith*, 415 F. Supp.2d at 102.[2]

The D.C. WPA also fails as an analogy to the FCA's anti-retaliation provision because the D.C. WPA does not afford the range of relief for retaliatory action that is provided by the FCA. In addition to reinstatement, the FCA permits recovery of two times the amount of backpay plus compensation for any special damages sustained as a result of the retaliatory action. 31 U.S.C. § 3730 (h)(2). An award of future earnings in place of reinstatement, as well as damages for emotional distress, have been permitted under the statutory provision for "special damages." *Hammond v. Northland Counseling Center, Inc.*, 218 F.3d 886, 892-93 (8th Cir. 2000). The D.C. WPA's recovery provisions, in contrast, are far more limited. Unlike the FCA's anti-retaliation provision, the D.C. WPA does not provide for an award of double the backpay owed, nor does it provide for special damages nor provide for an award of future earnings in place of reinstatement. D.C. Code § 1-615.54

Furthermore, the District's assertion that application of a one-year statute of limitations "would not frustrate the purpose of the FCA" (Def. Brf. at 6) is directly contrary to the conclusion reached by Congress. The District's contention appears to be predicated on the fact that, in the past, some courts in other jurisdictions have applied statutes of limitation of one year or even less to FCA retaliation claims. *Id.* But those courts did so without guidance from

[2] To the contrary, as discussed *infra*, Congress has made it clear that it did not intend for claims under Section 3730(h) to be subject to a limitations period any shorter than three years.

Congress regarding what limitations period is sufficient to accomplish the purposes of the FCA. Since those cases were decided, Congress itself has made it clear that the purpose of the statute is not met by a one-year statute of limitation.

Defendant's contention disregards the fact that Congress amended the FCA to clarify that the proper statute of limitations for a retaliation claim under that statute is three years. Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. Law 111-203 (H.R. 4171) (Section 1079A) (amending 31 U.S.C. 2139(h)). Obviously, had Congress concluded that a one-year period for bringing a retaliation claim was sufficient to meet the purposes of the statute, it would have amended the statute to provide a one-year limitation period. But it did not. To the contrary, it acted to ensure that a full three years was permitted for the bringing of such a claim. In so doing, it made clear its view that any period shorter than three years would be inconsistent with the purpose of the FCA and its anti-retaliation provision. Thus, the second prong of the *North Star Steel* test does not permit application of the D.C. WPA's one-year statute of limitations to plaintiff's Federal FCA claim.

Finally, the District of Columbia's argument ignores the fact that the DCWPA has been amended to provide a 3 year statute of limitations. Moreover, the District of Columbia Superior Court has ruled that the amended version of the D.C. WPA is to be applied retroactively. *Cusick v. District of Columbia*, No. 2008-CA-6915 (D.C. Super. Ct. August 17, 2010) at 24- 27, 35- 36 ("The committee report is clear in my view that the statute is to apply retroactively. . . . [T]he law of the District as declared in the *Montgomery [v. District of Columbia*, 598 A.2d 162 (D.C. 1991)] case and cases cited in the *Montgomery* case, based upon the legislative history of the amendment to the Whistleblower's Act as stated in the committee report, based upon the

Uniform Law Commissioner's Model Statutory Construction Act, all of these authorities constrain the Court to apply the amendment notwithstanding that this case was pending before the amendment.").

We are aware that this Court recently declined to apply the amended D.C. WPA statute of limitations retroactively in *Payne v. District of Columbia*, No. 08-163 (D.D.C. September 29, 2010). However, it is our understanding that when it did so, the Court was not aware that the local District of Columbia Court had interpreted the amended law to apply retroactively. See *id.* at 19. Federal courts in the District of Columbia are to "defer to the local courts' interpretations of the D.C. Code in the same manner that other federal courts defer to state court interpretations of state law." *Handy v. Shaw, Bransford, Veilleux & Roth*, 325 F.3d 346, 352 (D.C. Cir. 2003). As the Court of Appeals for the D.C. Circuit has explained, this is because "Superior Court judges presumably have as much expertise as would a state court judge in deciding questions of state law." *Id.* Accordingly, we submit that, even were this Court to find that the D.C. WPA provides the most analogous statute of limitations for an FCA claim, it should follow the interpretation of the D.C. Superior Court and retroactively apply the amended version of the statute with its three-year statute of limitations. See also *Simpson v. District of Columbia Office of Human Rights,* 597 A.2d 392, 402 (D.C.1991) ("where two constructions as to the limitations period are possible, the courts prefer the one which gives the longer period in which to prosecute the action....If there is any reasonable doubt in a statute of limitations problem, the court will resolve the question in favor of the complaint standing and against the challenge.") (ellipses in original).

## II. The "Residual" Statute of Limitations in D.C. Code § 12-301(8)

**Properly Applies to Plaintiff's Federal FCA Retaliation Claim**

A. The District of Columbia False Claims Act Provides the Most Analogous State Limitations Period

The limitations period properly applicable to plaintiff's Federal FCA retaliation claim is the limitations period that governs retaliation claims under the D.C. False Claims Act ("D.C. FCA"). A D.C. FCA retaliation claim is the cause of action most analogous to a Federal FCA retaliation claim and the three-year limitations period applicable to such a claim fully comports with the policies underlying the federal FCA. *North Star Steel*, 515 U.S. at 34.

Plainly, the District of Columbia cause of action most analogous to a Federal False Claims Act retaliation claim is a retaliation claim under the District of Columbia False Claims Act. D.C. Code § 2-308.13 et seq. Like the Federal FCA, the D.C. FCA authorizes false claims actions to be undertaken by individuals and provides protection against retaliation for involvement in such actions. See *Grayson v. AT&T*, 980 A.2d 1137, 1146 at n.25 (D.C. 2009) (vacated on other grounds) ("The [District of Columbia] FCA's legislative history informs us that the FCA is based on California's False Claims Act, California Government Code §§ 12650-12655, which in turn was derived in large part from the Federal False Claims Act, 31 U.S.C. §§ 3729-3733," citing Council of the District of Columbia, Committee on Government Operations, Report on Bill 11-705, The "Procurement Reform Amendment Act of 1996," September 24, 1996 at 3.).

Indeed, the language of the two statutes' anti-retaliation provisions is almost identical. The Federal FCA's retaliation provision states that

> Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions

> of employment by his or her employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under this section, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this section, shall be entitled to all relief necessary to make the employee whole.

31 U.S.C. 3730(h).[3] The D.C. FCA's retaliation provision similarly provides that

> No employer, including the District of Columbia, shall discharge, demote, suspend, threaten, harass, deny promotion to, or in any other manner discriminate against an employee in the terms and conditions of employment because of lawful acts done by the employee on behalf of the employee or others in disclosing information to a government or law enforcement agency relating to, or in furtherance of, a false claims action, including investigation of, initiation of, or testimony or assistance in, an action filed or to be filed pursuant to § 2-308.15.

D.C. Code § 2-308.16(b).

Thus, the elements of retaliation claims under these two statutes "are substantively similar." *Kakeh v. United Planning Organization, Inc.*, 655 F. Supp.2d 107, 115 (D.D.C. 2009). Under both statutes, a plaintiff must show that she engaged in an activity protected by the False Claims Act statute, that defendant knew she was so engaged, and that defendant took a discriminatory action against plaintiff because of her engagement in such activity. *Id*[4]

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[3] As the Court noted in its May 13 Order (p. 16, n.8) the FCA has been amended several times since the filing of Plaintiff's original Complaint. Among other changes, these amendments increased the range of individuals covered by § 3730(h), by changing "any employee" to "any employee, contractor, or agent," and by removing the restriction that the discriminatory action be taken "by his or her employer." Fraud Enforcement and Recovery Act of 2009, S. 386, 111th Cong. § 4 (2009). As Ms. Saunders was an "employee" of the District of Columbia and it was her employer that took the retaliatory action against her, her claim was within the purview of the previous version of the FCA and it remains covered by the amended version.

[4] It is not just that the substantive elements of the federal and D.C. FCA retaliation provisions are substantively similar on their face and as applied, the Amended Complaint alleges actions which would be covered by the D.C. FCA retaliation provision. In finding the Amended Complaint sufficient to state a claim under the Federal FCA retaliation provision and denying Defendant's Motion to Dismiss [Dkt. 62, May 13, 2010), this Court referred to the fact that Defendant did not dispute Plaintiff's characterization of the Amended Complaint in Pl.'s FCA

The D.C. FCA also provides a breadth of remedies similar to that afforded by the Federal FCA. The Federal FCA mandates that relief for an employee subjected to a retaliatory action "shall include reinstatement with the same seniority status such employee would have had but for the discrimination, 2 times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees." 31 U.S.C. § 3730(h). The D.C. FCA affords exactly the same range of remedies, as well as "where appropriate (except in the case of the District), punitive damages." D.C. Code § 2-308.16(c). Based both on the elements of the claim and on the remedies available, it is apparent that the state law claim most analogous to a Federal FCA retaliation claim is a claim of retaliation under the D.C. FCA.

Section 2-308.17 of the D.C. FCA, entitled "Limitation of Actions; burden of proof," provides that "a civil action brought pursuant to § 2-308.15 may not be filed more than 6 years

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Supp. Mem. At 2 - 5 ([Dkt. 41, filed Nov. 28, 2005]. Dkt. 62, Mem. Op. at 25. We incorporate herein Pl."s Supp. FCA Mem. at 2-5 [Dkt. 41] which section concludes (at 5): "Plaintiff engaged in protected activity when she investigated and questioned requested payments to IBM which were to be made with federal funds. Her employer knew she was investigating potentially unlawful payments and the District of Columbia was on notice that Plaintiff's investigation could have led to an FCA claim because she clearly stated that she felt she was being asked to provide an illegal certification for payment. Within... months....Plaintiff was involuntarily transferred...and a month later she was terminated." That the payments to IBM being investigated and disclosed by Plaintiff clearly were of the type covered by the D.C. FCA–e.g., Sec. 2-308.14 (a) (1) "Knowingly presents, or causes to be presented, to an officer or employees of the District a false claim for payment or approval"; (2) "Knowingly makes, uses, or causes to be made or used, a false record or statement to get a false claim paid or approved by the District"; (3) "Conspires to defraud the District by getting a false claim allowed or paid by the District";(8) "Is a beneficiary of an inadvertent submission of a false claim to the District, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the District"; (9) "Is the beneficiary of an inadvertent payment or overpayment by the District of monies not due and knowingly fails to repay the inadvertent payment or overpayment to the District" merely reinforces a conclusion that the D.C. FCA retaliation provision is the most analogous state law claim to a Federal FCA retaliation claim.

after the date on which the violation of § 2-308.14 is committed or more than 3 years after the date when facts material to the right of action are known or reasonably should have been known by an official of the Office of Corporation Counsel, but in no event more than 9 years after the date on which the violation is committed, whichever occurs last."[5] Research has revealed no cases in either the local or federal courts addressing whether this 6 year limitations period applies to retaliation claims under the D.C. FCA statute. If the six-year period established in § 2-308.17 is not applicable to claims under § 2-308.16, however, then by District of Columbia law, the limitations period for D.C. FCA retaliation claims would be governed by the "residual" statute of limitation provision of D.C. Code § 12-301(8). That section provides that an action "for which a limitation is not otherwise prescribed" must be brought within three years. D.C. Code § 12-301(8). Thus, the shortest limitations period that could be applied to a D.C. False Claims Act retaliation claim is three years.

Applying the three-year minimum limitations period applicable to the D.C. FCA to plaintiff's Federal FCA claim comports fully with the policies underlying the federal FCA, as required by the second *North Star Steel* factor. Congress's purpose in enacting Section 3730(h) "was to 'assure those who may be considering exposing fraud that they are legally protected from retaliatory acts.'" *United States ex rel. Yesudian v. Howard University*, 153 F.3d 731, 736 (D.C. Cir. 1998) (quoting S. Rep. No. 99-345, at 34, *reprinted in* 1986 U.S.C.C.A.N. at 5299). The three-year limitations period is well-suited to vindicating that interest. "Nothing in the legislative

[5] Section 308.15 provides for civil actions to be brought either by the Corporation Counsel (subsection (a)) or as a qui tam action by a person "for the person and either for the District or in the name of the District" (subsection (b)). Section 308.14 details the acts for which "any person . . . shall be liable to the District."

history suggests that Congress intended these [FCA retaliation] claims to proceed on an especially fast track, which it might have easily indicated in the statute had it cared to." U*nited States ex rel. Ackley v. International Businesss Machines Corp.*, 110 F. Supp.2d 395, 405 (D. Md. 2000). Moreover, the three-year limitation period strikes the proper balance "between the time for an employee to present a claim and the right of an employer to be free from stale claims. . . . The search for truth if the three-year period is acknowledged will not 'be seriously impaired by the loss of evidence, whether by death or disappearance of witnesses, fading memories, disappearance of documents, or otherwise.'" *Id.* (quoting *United States v. Kubrick*, 444 U.S. 111, 117 (1979)). Thus, the residual three-year limitations period provided by D.C. Code § 12-301(8), which applies to D.C. FCA retaliation claims, is the limitations period that is appropriately applied to plaintiff's Federal FCA retaliation claim.

B. Other Potentially Analogous State Law Claims Also Are Governed By the Residual Three-Year Statute of Limitations

The appropriateness of applying the District of Columbia's "residual" three-year statute of limitations to Ms. Saunder's claim is further supported by the fact that the same residual three-year period applies in the District of Columbia to wrongful termination and personal injury claims. Many courts deciding Federal FCA retaliation claims have held that the most analogous state law limitations period for such a claim is the one governing actions for wrongful termination in violation of public policy. See, *e.g.*, *United States ex rel. Smith v. Yale University*, 415 F. Supp.2d 58 (D. Conn. 2006); *United States ex rel. Ackley v. International Businesss Machines Corp.*, 110 F. Supp.2d 395 (D. Md. 2000); *United States ex rel. Lujan v. Hughes Aircraft Co.*, 162 F.3d 1027 (9th Cir. 1998). Other courts have instead found the most analogous

state limitations period to be the one applicable to personal injury claims, *United States ex rel. McKenna v. Senior Life Management, Inc.*, 429 F. Supp.2d 695 (S.D.N.Y. 2006), or alternatively have applied the "catchall" or "residual" statute of limitations. *Campion v. Northeast Utilities*, 598 F. Supp.2d 638 (M.D. Penn. 2009).[6] Under District of Columbia law, both wrongful discharge claims and personal injury actions are governed by the three-year "residual" statute of limitations provided in D.C. Code § 12-301(8). *Stephenson v. American Dental Association*, 789 A.2d 1248, 1749 (D.C. 2002) (wrongful discharge in violation of public policy); *Griggs v. Washington Metropolitan Area Transit Authority*, 232 F.3d 917, 919 (D.C. Cir. 2000) (personal injury). Thus, the three-year period established in D.C. Code § 12-301(8) properly applies to plaintiff's claim whether her claim is analogized to a wrongful discharge claim or a personal injury claim.

The District of Columbia recognizes the tort of wrongful discharge in violation of public policy. In this jurisdiction, a plaintiff may bring such a claim when an employer terminates her for reasons that are contrary to a clearly articulated public policy. *Adams v. Cochran & Co.*, 597 A.2d 28 (D.C. 1991); *Carl v. Children's Hospital*, 702 A.2d 159 (D.C. 1997); *Byrd v. VOCA Corp. of Washington, D.C.*, 962 A.2d 927 (D.C. 2008). The District of Columbia Court of Appeals has held that the requisite clearly articulated mandates can be found in a "statute or regulation which clearly reflects" a particular public policy. *Carl*, 702 A.2d at 162. A federal statute such as the FCA that prohibits employers from taking discriminatory action against

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[6] Pennsylvania (*Campion*) does not have a state FCA, while Maryland (*Ackley*) and Connecticut (*Smith*) have FCAs that apply only to Medicaid-related fraud. New York now has a state FCA similar to the Federal FCA but it was enacted in 2007, after the decision in *McKenna.* The California FCA existed when *Lujan* was decided, but apparently no party argued for its application in that case.

employees for the exercise of specific rights articulates just such a mandate of public policy. *Smith*, 415 F. Supp. 2d at 101. Here, plaintiff has alleged that defendant District of Columbia discharged her for reasons that were directly contrary to the public policy mandate clearly articulated by the FCA's anti-retaliation provision. Her claim is thus analogous to a claim under District of Columbia law for wrongful discharge in violation of public policy.

As discussed, *supra*, the three-year period provided in the "residual" statute of limitations also best comports with the policies and purposes of FCA § 3730(h), as required by the second *North Star Steel* factor. Moreover, Defendant cannot contend that it had any reasonable expectation that plaintiff's FCA retaliation action would be governed by a limitations period shorter than three years. When the Defendant took action against Ms. Saunders and when this case was then filed in 2002, Defendant had no reasonable expectation of a one-year limitations period. To the contrary, until the Supreme Court decided *Graham County* in April 2005, some jurisdictions applied the six-year period established in § 3731 of the FCA, while others applied state limitation periods of varying lengths.[7] Indeed, even after *Graham County* ruled that the six-year period of § 3731 was not applicable to Federal FCA retaliation claims, Defendant still had no grounds to presume that such claims would be governed by a short limitations period in the District of Columbia given that the question of what limitations period applies to Federal FCA retaliation claims has been an open one in this jurisdiction and that no consensus emerged in courts across the country. See *Graham County*, 545 U.S. at 419, n.3 (listing a broad selection of

[7] "We granted certiorari to resolve a disagreement among the Courts of Appeals regarding whether § 3731(b)(1)'s 6-year statute of limitations applies to § 3730(h) retaliation actions or whether, instead, the most closely analogous state limitations period governs." *Graham County*, 545 U.S. at 414.

"likely analogous statutes of limitations" potentially applicable to Federal FCA retaliation claims).

## CONCLUSION

For the reasons set forth above, the Court should deny Defendant's Renewed Motion to Dismiss and rule that Plaintiff's claim of retaliation in violation of the Federal False Claims Act is timely.

Respectfully submitted,

/s/ Wendy L. Kahn

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## CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of October, 2010, I electronically filed the foregoing Plaintiff's Opposition to Defendant District of Columbia's Renewed Motion to Dismiss Plaintiff's Federal False Claims Act Retaliation Claim using the CM/ECF system, which will send notification of such filing, via electronic mail, to attorney for the Defendants:

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