

TOLLEFSEN LAW OFFICE PLLC

John J. Tollefsen, WSBA #13214
18225 8th Place West
Lynnwood WA 98037-4901
Phone/Fax: 425-673-0300
Email: john@tollefsenlaw.com
Attorney for Plaintiff Tides

US DISTRICT COURT WESTERN DISTRICT OF WASHINGTON

NICHOLAS P. TIDES,

Plaintiff,

vs.

THE BOEING COMPANY,

Defendant.

**COMPLAINT FOR
RETALIATORY DISCHARGE
OF A WHISTLEBLOWER
UNDER 18 U.S.C. §1514A(a)(1)**

Plaintiff alleges:

I. SUMMARY OF THE CASE

1. The Boeing Company (“Boeing”) fired Plaintiff Tides, a former internal auditor, in retaliation for reporting suspected violations of Sarbanes-Oxley Act of 2002 §404¹ (Sarbanes-Oxley, or “SOX”).

2. For the three fiscal years from 2004 through 2006, Boeing failed its internal SOX audits for effective controls of its computer network and software systems

¹ Codified as 15 U.S.C. § 7262.

1 (“IT systems” i.e. information technology systems). If it failed the internal audits in
2 2007, Boeing risked being required to report a material weakness in its annual audit as
3 required by SOX §404. This would likely result in a qualified audit opinion being filed
4 with the Securities Exchange Commission (“SEC”). As a consequence, Boeing was likely
5 to suffer a catastrophic negative financial impact because material weakness in IT
6 controls affects the perceived integrity of Boeing’s financial statements. To avoid this
7 possibility, Boeing hired PriceWaterhouseCoopers (“PWC”) to supervise Boeing’s
8 independent internal auditors to ensure that Boeing’s internal auditors did not report
9 deficiencies sufficient to constitute a material weakness. Plaintiff Tides was employed
10 by Boeing as an auditor in its IT SOX Audit Group.

11 3. PWC did not comply with internal auditing standards which required
12 independence and objectivity of its auditors. For example, PWC, in violation of its own
13 written standards, industry standards and government mandated standards, designed
14 internal controls and audited those internal controls so that it was a foregone
15 conclusion that Boeing would pass that segment of the audit. In addition, PWC
16 cooperated with Boeing’s intentional misclassification by counting as “passed” items
17 that were not tested. Plaintiff Tides, as well as other internal Boeing internal auditors,
18 reported the potentially illegal conduct up the management channel. Boeing
19 management ignored the reports, stating that § 404 of the Sarbanes-Oxley law would be
20 repealed. Eventually Boeing’s problematic internal auditing was reported in the Seattle
21 Post Intelligencer (“PI”). After Boeing decided to cover-up the information, Plaintiff
22 Tides gave some information for the article along with other Boeing employees. The PI
23 offered strict confidentiality. Although the right to speak to the press when
24 management fails to correct potentially illegal conduct is protected activity under the
25 law, Boeing fired Tides citing the PI article as its pretext. In its annual audit dated

1 December 31, 2007, Boeing reported that it had adequate controls over its information
2 technology systems, covering-up the suspicious information reported by its internal
3 auditors.

4 4. Plaintiff Tides' concerns regarding the internal control weaknesses in
5 Boeing's IT system were unfortunately confirmed just prior to his termination when
6 Boeing suffered potentially \$5 billion to \$15 billion in damages because of defective
7 controls in its computer system. Gerald Eastman, a former quality-assurance inspector
8 in Tukwila, took more than 320,000 pages of confidential Boeing documents by
9 exploiting material weaknesses in Boeing's IT system. Despite the inadequate controls,
10 Boeing's CFO and CEO have certified annually that Boeing's internal control over
11 financial reporting ("ICFR") is effective.

12 **II. JURISDICTION AND VENUE**

13 5. This Court has original subject matter jurisdiction under 28 U.S.C. §1331
14 and 18 U.S.C. §1514A(b)(1)(B), in that claims are asserted herein under the retaliation
15 provision of the Sarbanes-Oxley Act of 2002.² Venue lies in this district pursuant to 28
16 U.S.C. §1391 because Boeing is subject to personal jurisdiction in the Western District
17 of Washington.

18 **III. PARTIES**

19 6. Defendant Boeing is a publically traded Delaware corporation doing
20 business in the Western District of Washington and accelerated filer subject to SOX
21 including §404.

22 7. Plaintiff Nicholas P. Tides is a citizen and resident of the State of
23 Missouri. He holds a Bachelor of Arts degree (B.A.) in Economics from Indiana
24

25 ² 18 U.S.C. §1514A(a)(1).

1 University and a Masters of Business Administration (MBA) from Anderson University.

2 **IV. FACTS ENTITLING PLAINTIFF TO RELIEF**

3 8. Sarbanes-Oxley was enacted in 2002 to remedy the perceived lack of
4 internal controls in companies like Enron and force management of public companies
5 to investigate reports by their internal auditors. Congress found that the Enron fraud
6 was in part due to its management's failure to respond to concerns of its internal
7 auditors and the lack of channels of communications for reporting the concerns that
8 would force exposure of the fraud.

9 9. Beginning in 2004, Section 404 of Sarbanes-Oxley created an entirely
10 new compliance environment for most large public companies which faced new
11 requirements to document, evaluate, test, and monitor internal controls over financial
12 reporting. This was also a critical concern of Boeing because it had suffered previous
13 financial loss through employee theft as a result of inadequate controls. A primary focus
14 of the internal auditors was Boeing's IT system because it contained all the information
15 that was relied upon to produce Boeing's annual financial statements, which were
16 audited by its external auditors, Deloitte & Touche.

17 10. Although Boeing worked on developing adequate internal controls over its
18 IT system in 2004, both Boeing and its external auditors rated the company's inability
19 to patch database and software development security holes as a "significant deficiency"
20 within the computer infrastructure. In 2005, the deficiency became public when Boeing
21 prosecuted its director of supply chain management and a subordinate for embezzling
22 approximately \$300,000. As a result, Boeing redoubled its efforts to place adequate
23 controls over its IT system. Boeing reported that its ICFR was effective. Nevertheless, in
24 2005, Boeing's external auditor again rated the IT system significantly deficient.

25 11. In 2006, it appeared that Boeing would again fail to implement adequate

1 controls. Boeing hired PriceWaterhouseCooper (“PWC”) on or about August of 2006 to
2 conduct internal audits and design controls for its IT system. In violation of internal
3 auditing standards which provide that those who design controls must be independent
4 from internal auditors, Boeing comingled PWC consultants in both the IT control and
5 Audit teams. Nevertheless, its external auditors rated the controls significantly deficient
6 for the third year in a row.

7 12. As a result of a significant deficiency for more three years, Boeing faced
8 the risk that the external auditors would report a material deficiency in its annual audit.
9 This would result in a qualified audit opinion and likely cause severe repercussions for
10 Boeing’s stock, credit rating, and sales. In 2007, PWC was given increased power to
11 make certain that Boeing implemented adequate controls. It employed 39 auditor
12 consultants to assist the 10 Boeing employee auditors in Boeing’s IT SOX Audit Group.

13 13. Section 404 of the Sarbanes Oxley Act requires management to produce
14 an annual internal control report.³ This report must affirm the responsibility of
15 management for establishing and maintaining an adequate internal control structure
16 and procedures for financial reporting. This report must also contain an assessment, as
17 of the end of the most recent fiscal year of the reporting company, of the effectiveness of
18 the internal control structure and procedures of the issuer for financial reporting. This
19 report is produced, in large part, based upon the results of internal audits by Boeing’s
20 IT SOX Audit Group. The IT SOX Internal Audit function involved testing the Boeing’s
21 information systems internal controls as required by SOX and the SEC’s rules and
22 regulations thereunder. The external auditors must annually attest that management
23

24 ³ 15 U.S.C. Sec. 7262. See also Item 308, Regulation S-K; Rule 13a-15 of the Securities Act of 1934 (17
25 C.F.R. § 240.13a-15); and Rule 15d-15 of the Securities Act of 1934 (17 C.F.R. § 240.15d-15). These are
collectively referred to in this complaint as “Section 404 of the Sarbanes Oxley Act and SEC rules and
regulations thereunder.”

1 has maintained in all material respects effective internal controls over financial
2 reporting.

3 **A. BOEING REPORTED INCORRECT INTERNAL AUDIT PASS RATES TO**
4 **ITS EXTERNAL AUDITORS**

5 14. In July 2007, Plaintiff Tides discovered that Boeing's IT internal controls
6 that had not been rated were being counted as effective controls which had passed audit
7 for purposes of determining compliance with SOX. Boeing inflated pass rates for
8 controls to over 90%. To reach that benchmark, PWC and Boeing included "not rated"
9 controls as "Effective Controls." Exhibit 1 to this complaint is a copy of a Boeing
10 document (Corporate Audit Interim Review handout) that reveals the deception. On
11 Exhibit 1, Design Effectiveness ("DE") pass rate should have been calculated as 87.1%
12 (Effective Controls numbering 1761 divided by Total Controls numbering 2022) instead
13 of the above-90% number of 94.5% shown on Exhibit 1. Similarly, the Operating
14 Effectiveness ("OE") pass rate should have been calculated as 67.7% (Effective Controls
15 numbering 1363 divided by Total Controls numbering 2012) instead of the above-90%
16 number of 93% shown on Exhibit 1. Therefore on its face, Exhibit 1 is false, deceptive,
17 and misleading. In addition, many of the controls labeled "not rated" had failed audit
18 but were counted with the "not rated" to disguise the true fail rate.

19 15. Plaintiff Tides and Boeing SOX auditor, Matthew C. Neuman (also fired in
20 retaliation by Boeing) agreed the methodology was in error. They reported the mistake
21 to their supervisor James Estep but Mr. Estep took no action.

22 16. On July 30, 2007, Corporate Audit Interim Review handout (Exhibit 1)
23 was presented without correction at a meeting of Boeing's Office of Internal
24 Governance. Audit Executives, Directors, and Managers including Macy Moring, Steve
25 Wescott (Director of Corporate Audit), Bob Jouret (Corporate Audit Vice President),

1 Nancy Ross-Dronzek (Director of Corporate Audit), and Rich Sievert were present.
2 When the handout (Exhibit 1) was projected on the screen in the meeting, Plaintiff
3 Tides walked to the screen and pointed out to everyone in the room the obvious
4 overstatement of the Pass Rate Percentages. He argued that the overstatements were
5 materially misleading and in violation of Section 404 of the Sarbanes Oxley Act and
6 therefore must be corrected. Others disagreed and said the numbers were correct.
7 When the meeting ended it appeared as though nothing would be done.

8 17. Afterwards, Plaintiff Tides reported the false pass rates to Macy Moring
9 (Corporate Audit – IT SOX Manager) and Lourdes Domingo (Corporate Audit – IT SOX
10 Senior Manager). He believed they would not remedy the situation so he pressed the
11 issue again with Bob Jouret (Corporate Audit Vice President) and Steve Wescott
12 (Director of Corporate Audit).

13 18. Boeing management refused to correct the errors and began to harass Mr.
14 Neumann and Plaintiff Tides, which culminated in the termination of Mr. Neumann's
15 and Mr. Tide's employment approximately two months later.

16 19. On information and belief, the erroneous information in Exhibit 1 was
17 given to Boeing's external auditors and was relied upon by Boeing's CEO and CFO who
18 certified under criminal penalty the reliability of Boeing's financial statements for fiscal
19 year 2007.

20 **B. BOEING AND PWC VIOLATED INDEPENDENCE AND OBJECTIVITY**
21 **STANDARDS FOR INTERNAL AUDITORS**

22 20. On July 3, 2007, Plaintiff Tides reported to his managers in the Internal Audit
23 Group (Macy Moring, Lourdes Domingo, Steve Wescott, and Bob Jouret) that PWC, while
24 acting as contractors within Boeing's IT SOX Internal Audit Group, was apparently violating
25 independence standards required by federal securities law. At the very minimum, PWC gave the

1 appearance of impropriety by initiating ex-parte contact between internal auditors and those who
2 were designing controls. PWC employees engaged to assist Boeing's IT SOX Internal Audit
3 Group perform audits of information systems internal controls were apparently secretly
4 colluding with PWC employees who designed the internal controls being tested. Plaintiff Tides
5 accidentally discovered one such meeting.

6 21. Plaintiff Tides explained to his managers that PWC was in essence "grading its
7 own papers" by having those who designed certain information systems controls also audit those
8 controls. It was therefore a foregone conclusion that Boeing's troubled IT systems would be
9 given undeserved passing grades and the integrity of the audit system would be compromised.

10 22. Boeing also allowed auditors to have lunch with persons in charge of designing
11 and writing systems controls. Plaintiff Tides reported these appearances of lack of independence
12 and objectivity but his supervisors defended the practice.

13 23. Plaintiff Tides reported the apparent violations of independence and objectivity
14 standards in a series of emails. In addition, Plaintiff Tides had numerous conversations
15 regarding this activity with IT SOX Audit Group managers and other supervisory personnel
16 including Macy Moring, James Estep, Steve Wescott, Lou Domingo, and Bob Jouret).

17 24. Boeing IT SOX Internal Audit Group managers refused to take corrective action.
18 Plaintiff Tides attempted to report this inappropriate activity directly to Boeing's Audit
19 Committee on an anonymous basis using the Company's online form on or about July 5, 2007.
20 Even though SOX requires Boeing to make this type of reporting available, the function was not
21 working. Vince Workman of Boeing's Ethics Office confirmed Boeing knew the anonymous
22 reporting did not function and said Boeing should look into fixing it someday.

23 25. Because the apparent lack of independence and objectivity is a serious violation
24 of SOX, Plaintiff Tides filed a complaint with Boeing's Ethics Office that was handled by Mark
25 Reardon, an attorney in The Boeing Company's General Counsel Office, on or about July 24,

1 2007 alleging that Management was violating Section 404 of the Sarbanes Oxley Act due to the
2 collusion between PWC SOX auditors and PWC information systems internal controls design
3 teams. The complaint was not properly investigated and no changes were made.

4 **C. CHANGING OF RATINGS OF AUDITS BY NON-AUDITORS DUE TO**
5 **MANAGEMENT PRESSURE**

6 26. Plaintiff Tides reported to his managers that the database used to collect the IT
7 SOX audit results allowed non-auditors to change ratings of information systems internal
8 controls from fail to pass. Plaintiff Tides believes that some ratings were fraudulently changed
9 through this device. Boeing employees faced immense pressure from management to give pass
10 ratings on audits or to face retribution from managers within and outside the IT SOX Audit
11 division. Plaintiff Tides reported these changes in rating to Lou Domingo with regard to Chrysti
12 Ziegler and Hazel Bisou (members of the PWC design team, i.e. auditees) who had apparently
13 changed audit findings within the SOX Database RiskNavigator system without the knowledge
14 or authority of anyone in IT SOX Audit Group. After these changes were discovered, these
15 PWC employees blamed Plaintiff Tides for the fraudulent changes of audits from Effective to
16 Not Effective and back to Effective. In a series of emails, Plaintiff Tides reported these acts to
17 Boeing Managers Lou Domingo, Macy Moring and PWC Managers Christopher Lydon and
18 Naman Parekh. His report was ignored and no disciplinary action was taken against Ms. Ziegler
19 and Ms. Bisou and their access to the SOX RiskNavigator system remained unchanged. This
20 inaction signaled the audit department that those who caused a control to “pass” using any
21 scheme or device would be rewarded and those who objected would be punished.

22 **D. BOEING INTENTIONALLY IGNORED ITS OBLIGATIONS UNDER**
23 **SOX**

24 27. On information and belief, Plaintiff Tides alleges that IT SOX Audit Group
25 personnel Steve Yunker and Karl Reid formally reported to Boeing’s Ethics Office and Officers

1 that each had overheard Jim Estep and Shauib Shakoor (PWC Regional Process Lead in the IT
2 SOX Audit Group) targeting Plaintiff Tides for discharge because he had reported violations of
3 Section 404 of the Sarbanes Oxley Act of 2002 and the SEC's rules and regulations thereunder.
4 Boeing's Ethic Office took no action to protect Plaintiff Tides or discipline anyone as a result of
5 the complaints.

6 **E. BOEING DID NOT CONSIDER SOX TO BE AN IMPORTANT**
7 **OBLIGATION BECAUSE IT WAS TO BE REPEALED**

8 28. In mid-February of 2007, Boeing Vice President in charge of corporate
9 audit, Robert Jouret, presented a PowerPoint to the entire corporate audit staff. IT SOX
10 was one component of the total audit staff. In response to a question why Boeing only
11 had 10 IT SOX auditors, Mr. Jouret said in essence, 'Mr. McNerney believes SOX will be
12 repealed and so we are using PWC temporary auditors rather than permanent Boeing
13 employees.'

14 29. In May of 2007 at the Boeing's corporate audit symposium in New
15 Orleans, Mr. Jouret took all the IT SOX staff present into a room by themselves to
16 express their concerns. After hearing that the IT SOX audit was being compromised in
17 the view of the auditors, he said in essence, 'PWC is in charge. Stop complaining. SOX is
18 being repealed and you will be lucky to keep your jobs.' He said he was expressing the
19 viewpoint of CEO James McNerney.

20 30. As a result of these statements by Mr. Jouret, Plaintiff Tides believed that
21 Boeing would not allow its IT SOX auditors to be independent and objective and that
22 not giving controls a "pass" could result in discipline or termination of the auditor.

23 **F. HARASSMENT OF PLAINTIFF TIDES**

24 31. On or about May 31, 2007, Plaintiff Tides was required to attend a
25 mandatory meeting with Diane Kallunki, Boeing Director of Human Resources. At the

1 meeting, Ms. Kallunki told Plaintiff Tides, "We'd appreciate it if you'd just shut up."

2 32. Boeing had Plaintiff Tides followed when he left the company premises,
3 refused to pay him overtime, and treated him with open hostility because he continued
4 to insist that Boeing comply with SOX internal audit standards.

5 **G. CONTACTS WITH THE SEATTLE POST INTELLIGENCER**

6 33. On or about April 27, 2007, Andrea James, a reporter with the Seattle
7 Post Intelligencer ("PI"), left a voicemail in Plaintiff's voice-mailbox at Boeing
8 requesting a return call. Ms. James was working on a story, later published, on the
9 efforts by Boeing to hide its IT system faults and inappropriate conflicts of interest by
10 PWC. Ms. James was seeking confirmation of information she had received from other
11 sources at Boeing. Plaintiff Tides did not immediately return her call because at that
12 time he believed in the integrity of Boeing and his audit managers. Plaintiff Tides
13 continued to report his concerns through all channels at Boeing available to him.

14 34. After Plaintiff Tides became aware that the highest levels of Boeing
15 management were so committed to creating greater than 90% passing audits for the IT
16 department that improprieties would be ignored, he call Ms. James on July 5, 2007. On
17 July 7th he received assurances of confidentiality from the PI and had the understanding
18 that informing a reporter under these circumstances was protected activity. Plaintiff
19 Tides provided some information to the PI confirming aspects of the story. On July 16,
20 2007, the PI published an article by Ms. James entitled, *Boeing has been stung by*
21 *internal theft before*, which chronicled how IT failures had hurt Boeing. The next day,
22 the PI ran another story by Ms. James entitled, *Computer security faults put Boeing at*
23 *risk: Failings could leave it open to fraud, theft.*

24 35. Instead of deciding to comply with SOX and avoid retaliation against
25 employees who had engaged in protected activity, Boeing decided to hunt down

1 employees who had assisted the PI. On November 16, 2007, an article by Ms. James
2 entitled *Boeing bosses spy on workers: At companies like Boeing, employees enjoy*
3 *little privacy* detailed how the PI articles in July had triggered a Boeing investigation
4 that resulted in job termination.

5 **H. BOEINGS LACK OF INTERNAL CONTROLS OVER IT DEPARTMENT**
6 **REVEALED**

7 36. In the second week of July, 2007, Plaintiff Tides had agreed to talk to PI
8 reporter Andrea James out of concern that Boeing's disregard for SOX material control
9 rules and cover-up of false control testing would lead to disaster. His fears were
10 vindicated by the prosecution of Gerald Eastman, a former quality-assurance inspector
11 in Tukwila. Mr Eastman used material weaknesses in Boeing's IT system to take more
12 than 320,000 pages of confidential Boeing documents. In the indictment, a company
13 vice president estimated that had even a small portion of the documents fallen into the
14 wrong hands, the financial damage to Boeing could have ranged from \$5 billion to \$15
15 billion. In the case summary, prosecutors said that the files were not encrypted or
16 password-protected and that Mr. Eastman "had to exploit a weakness in Boeing's
17 computer system" to retrieve the files.

18 37. In March of 2008, Mr. Eastman went to trial claiming that he had
19 obtained the documents to prove that Boeing was falsifying testing on its assembly
20 lines. The jury could not reach a verdict and a declared mistrial. A new trial was
21 scheduled for January 2009. In July of 2008, Boeing agreed to not prosecute Mr.
22 Eastman in exchange for information.

23 38. Regardless of the merits of Mr. Eastman's position, Plaintiff Tides was
24 employed by Boeing to audit the potential of unauthorized access to the Boeing IT
25 system. Boeing intentionally ignored audit results, fabricated audit results, and

1 harassed auditors in order to avoid filing a qualified audit with the SEC. As a result, Mr.
2 Eastman and others were able to obtain unauthorized access to Boeing records.

3 **I. BOEING CONTINUES TO CERTIFY COMPLIANCE WITH SOX**

4 39. In the certification by Boeing’s CEO and CFO in its 10K filed for 2007,
5 they attested:

6 The registrant’s other certifying officer(s) and I have disclosed, based on our
7 most recent evaluation of internal control over financial reporting, to the
8 registrant’s auditors and the audit committee of the registrant’s board of
9 directors (or persons performing the equivalent functions):

10 (a) All significant deficiencies and material weaknesses in the design or
11 operation of internal control over financial reporting which are
12 reasonably likely to adversely affect the registrant’s ability to record,
13 process, summarize and report financial information; and

14 (b) Any fraud, whether or not material, that involves management or
15 other employees who have a significant role in the registrant’s internal
16 control over financial reporting. [emphasis added]

17 **J. OSHA COMPLAINT**

18 40. As required by 42121(b) of title 49 of the United States Code, Plaintiff
19 Tides filed a complaint with the Occupational Safety and Health Administrative
20 (“OSHA”) division of the U.S. Department of Labor on December 26, 2007 related to
21 the wrongful termination of his employment from Boeing. The only defense submitted
22 by Boeing in response to Plaintiff Tides OSHA complaint was that it terminated
23 Plaintiff Tides because he talked to the PI.

24 41. OSHA did not process the complaint promptly and Plaintiff Tides elected
25 to proceed in federal court. On October 8, 2008, OSHA issued a certified letter
acknowledging Plaintiff Tides right to proceed with a *de novo* claim federal court.

V. FIRST CLAIM FOR RELIEF

42. Plaintiff Tides realleges paragraphs 1-39.

43. In 1992, the Committee of Sponsoring Organizations of the Treadway

1 Commission (“COSO”) issued a landmark report on internal control, Internal Control—
2 Integrated Framework. Soon after publication, Boeing adopted the COSO principles for
3 its internal control policies and procedures. In 2002, SOX mandated the use of COSO
4 principles for public companies.

5 44. In a company memo dated March 16, 2007 (*PROCEDURE PRO-1873*),
6 Boeing formally adopted the *Standards for the Professional Practice of Internal*
7 *Auditing* as set forth by the Institute of Internal Auditors (“IIA”). The memo provided
8 in part,

9 The Vice President - Corporate Audit will:

- 10 1. Promote effective and efficient internal control throughout the company.
11 2. Ensure Corporate Audit performs its work independently and objectively,
and consistent with the Standards for the Professional Practice of Internal
Auditing as set forth by the Institute of Internal Auditors, as well as other
appropriate standards. [emphasis added]

12 45. IIA standard 1100, Independence and Objectivity, provides that
13 “Independence is the freedom from conditions that threaten the ability of the internal
14 audit activity . . . to carry out internal audit responsibilities in an unbiased manner. . . .
15 Objectivity is an unbiased mental attitude that allows internal auditors to perform
16 engagements in such a manner that they believe in their work product and that no
17 quality compromises are made. Objectivity requires that internal auditors do not
18 subordinate their judgment on audit matters to others.”

19 46. IIA standard 1130, Impairment to Independence or Objectivity, provides,
20 “If independence or objectivity is impaired in fact or appearance, the details of the
21 impairment must be disclosed to appropriate parties.” [emphasis added]

22 47. IIA standard 1130.A1, provides, “Internal auditors must refrain from
23 assessing specific operations for which they were previously responsible. Objectivity is
24 presumed to be impaired if an internal auditor provides assurance services for an
25

1 activity for which the internal auditor had responsibility within the previous year.”

2 48. Boeing is also subject to the requirements of Auditing Standard No. 2 of
3 the Public Company Accounting Oversight Board (PCAOB) which was adopted by the
4 SEC on June 17, 2004, and governs SOX 404(b) audits. It has provisions similar to
5 COSO and IIA Standards. Regarding situations where management refuses to complete
6 audit tests,⁴ the SEC has issued the following:

7 Paragraph 20 of Auditing Standard No. 2 describes the responsibilities that
8 management is required to fulfill for the auditor to satisfactorily complete an
9 audit of internal control over financial reporting. These responsibilities
10 include management evaluating the effectiveness of the company's internal
11 control over financial reporting and supporting its evaluation with sufficient
12 evidence, including documentation. If the auditor concludes that
13 management has not fulfilled these responsibilities, Auditing Standard No. 2
14 states that the auditor should communicate, in writing, to management and
15 the audit committee that the audit of internal control over financial reporting
16 cannot be satisfactorily completed and that he or she is required to disclaim
17 an opinion. Therefore, an auditor could not render either an adverse opinion
18 on management's assessment or an unqualified opinion on internal control
19 over financial reporting because, in this situation, the auditor would be
20 precluded from expressing any opinion.

21 Additionally, management is required to fulfill these responsibilities under
22 Items 308(a) and (c) of Regulation S-B and S-K, 17 C.F.R. 228.308 (a) and
23 (c) and 229.308 (a) and (c), respectively. To the extent that management has
24 willfully decided not to fulfill these responsibilities, the auditor also may have
25 responsibilities under AU sec. 317, *Illegal Acts by Clients*, and Section 10A of
the Securities Exchange Act of 1934.⁵ [emphasis added]

49. Plaintiff Tides, as an IT SOX Auditor, had a duty to report activities which
violated or appeared to violate Auditing Standard No. 2. In addition, Plaintiff Tides’
reports to management and eventually the press were protected under the anti-
retaliation whistleblower provisions of SOX in the following particulars:

- 1) Boeing’s information systems controls not tested had been fraudulently
counted as effective to bolster Boeing's misleading assertion and

⁴ The rule does not consider the case where management not only does not test but counts untested controls as “passed.”

⁵ Answer 8, *Staff Questions And Answers*, Auditing Internal Control Over Financial Reporting June 23, 2004 (Revised July 27, 2004), Public Company Accounting Oversight Board (PCAOB”).

certifications that its ICFR was effective.

- 2) Boeing's failed to maintain evidential documents to provide reasonable support for its assessment of internal controls over financial reporting.
- 3) Boeing's allowed non-auditors to change "fail" to "pass" on audit results.
- 4) Boeings used personnel who had responsibilities in both control and auditing within a one-year period thereby allowing "grading one's own paper."
- 5) Boeing allowed the appearance of a lack of independence and objectivity by permitting secret meetings and meals with certain auditors and control personnel.
- 6) Boeing exerted pressure on internal auditors that deprived them of independence and objectivity.
- 7) Boeing's financial statements were potentially misleading shareholders and the market.

50. Plaintiff Tides reasonably believed that the irregularities he discovered were potential violations of SOX § 404 (and the SEC's rules and regulations thereunder) and properly reported them to management and government channels.

51. Boeing attempted to coerce Plaintiff Tides into keeping silent by creating a hostile work environment including discipline and hostile interrogations. Boeing caused Plaintiff Tides to be followed to intimidate him. Boeing refused to pay overtime due him. Boeing started giving Plaintiff Tides poor and unjust performance evaluations in order to lay the groundwork for a reason to lawfully terminate him.

52. Boeing fired Plaintiff Tides in retaliation for his unwillingness to keep silent and participate in Boeing's cover-up.

53. As a result of Boeing's unlawful termination of Plaintiff Tides, animosity and hostility has developed such that reinstatement is not possible.

54. Since the termination, Plaintiff Tides has applied for numerous jobs. The initial interviews were positive and it appeared that Plaintiff Tides would be employed. Later, the prospective employer would delve more deeply into the Boeing termination. Each time, Plaintiff Tides would be rejected as an employee for undisclosed reasons. Plaintiff Tides' security clearance is up for review and may be revoked by the

1 Department of Defense as a result of the reputational damage Boeing has caused.
2 Plaintiff Tides' career path has been totally ruined resulting in extensive damages that
3 he will suffer the remainder of his life.

4 55. Boeing has also permanently damaged Plaintiff Tides' reputation.

5 56. Plaintiff Tides has suffered emotionally, experiencing mental anguish, and
6 has had need of medical care due to the actions of Boeing.

7
8 **VI. PRAYER FOR RELIEF**

9 Plaintiff Tides is seeking the following relief:

10 All relief necessary to make him whole including:

11 A. Reinstatement or Front Pay (to the extent that it is determined that Boeing's
12 hostile actions effectively prevent reinstatement). Front Pay should be for at least 10-15
13 years and include a sum for vested pension.

14 B. Back pay, raises, bonuses, benefits, overtime, reinstatement of seniority and
15 tenure, and other items necessary to make Plaintiff Tides whole.

16 C. An order expunging Plaintiff Tides' discipline, and ordering Boeing to remove
17 any records of disciplinary action against Plaintiff Tides.

18 D. An order prohibiting Boeing from disclosing any disparaging information
19 about Plaintiff Tides to prospective employers, or otherwise interfering with any
20 applications he might make in the future.

21 E. Compensatory monetary damages in an amount determined to be fair and
22 equitable compensation for Plaintiff Tides' emotional distress and loss of reputation.


23 F. Exemplary damages as permitted by law in an amount sufficient to deter
24 Boeing from future violations of the law.

25 G. Reasonable attorney fees for Plaintiff Tides' attorneys.

1 I. Costs of this litigation, including reimbursement for deposition fees, expert
2 witness fees, travel expenses, and other expenses to collect and produce evidence in this
3 matter.

4 J. Such other relief as is equitable and just.

5
6 Dated this October 31, 2008.

7 
8 John J. Tollefsen WSBA #13214
9 Certified Fraud Examiner
10 *Attorney for Plaintiff Tides*

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25