

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

AUGUST WALTER

*

CIVIL ACTION NO.:

*

VERSUS

*

SECTION: “ ”

*

*

BP AMERICA INC.

*

MAGISTRATE

* * * * *

COMPLAINT AND JURY DEMAND

COMES NOW, Plaintiff, August Walter, through undersigned counsel, and files this complaint to obtain full and complete relief and to redress the unlawful employment practices suffered by him as described herein.

I. PRELIMINARY STATEMENT

This action seeks declaratory, injunctive and equitable relief, back pay, reinstatement (or in lieu thereof, front pay), compensatory damages, treble damages, attorney’s fees, prejudgment interest, and costs for violations based on The Louisiana Environmental Whistleblower Statute, LA R.S. 30:2027, et seq.,

II. JURISDICTION AND VENUE

1. Plaintiff asserts that this Court has jurisdiction over this matter pursuant to diversity jurisdiction 28 U.S.C. § 1332 and pursuant to this Court's Supplemental Jurisdiction.
2. Venue is proper in this District pursuant to the United States Code of Judicial Procedure, 28 U.S.C. § 1391, because the unlawful employment practiced and other actions alleged in the complaint occurred in the Eastern District of Louisiana.

III. PARTIES

3. Plaintiff, August Walter ("Walter") is a person of the full age of majority and is a resident of St. Tammany Parish in the State of Louisiana. In all relevant times to this action, Plaintiff was employed by BP America, Inc.
4. BP America Inc. ("BP") is a non-Louisiana business corporation qualified to do and doing business within the confines of the Eastern District of Louisiana.

IV. FACTS AND ALLEGATIONS

SUMMARY

5. Walters began his employment with BP under its Gulf Coast Restoration Organization ("GCRO") with the position of State Planning Lead for the purpose of developing a descriptive plan to accomplish the cleaning of oil caused by the BP oil spill in April 2010 on various coastal areas and islands of Louisiana, Mississippi, Florida and Alabama. The plans are prepared for and approved with the oversight of the US Coast Guard's Federal On-Scene Coordinator ("FOSC") to be in compliance with federal and state environmental rules and regulations. BP is responsible for implementing all the plans including Shoreline Treatment

Recommendations (“STR”), which, as with all aspects of the clean up required FOSC approval. BP refused to follow the STR’s and Walter opposed BP’s refusal to comply. Ultimately BP demanded that Walter misrepresent clean-up data to get approval from the unified command to Legacy Coast Guard management (Virtual IMT). The misrepresented data would mislead USCG officials into believing that completed clean up activities in Mississippi were further along. The data presented at that time would indicate clean up operations were near complete. If near complete, it is with BP hopes that Coast Guard would make decision to transition to Virtual IMT. Once again, Walter opposed this action and advised BP management and Unified Command of the problem. Walter was terminated shortly thereafter for a pretextual reason.

6. Walter had worked for BP on its Gulf Coast Restoration Organization (“GCRO”) project for about a year without any complaints and with significant praise for his performance resulting in BP’s offer of employment. Walter began his employment with BP on or about May 9, 2011 in the position of State Planning Lead.
7. Walter’s duties and responsibilities included but were not limited to assisting in the development of the Shoreline Treatment Recommendation (STR), which – after input was received – it was forwarded to Unified Command for review, comment and approval. The purpose of the STR was to establish the plans and operations to accomplish the cleaning of oil caused by the BP oil spill in April 2010 on various coastal areas and islands of Louisiana, Mississippi, Florida and Alabama.
8. BP’s Gulf Coast Shoreline Clean-up operations require Coast Guard approval because BP

shares responsibility for the clean up with 51 percent of the responsibility going to the Coast Guard and 49 percent going to BP.

9. Michael T. Utsler (“Utsler”) is the Chief Operating Officer of BP Gulf Coast Restoration Organization (GCRO). Carla Fontenot (“Fontenot”) is the Deputy Incident Commander - GCRO VP of Operations. Mike Harrison (“Harrison”) is BP’s Operations Section Chief (“Harrison”). Jay Carstenbrock is BP’s Planning Section Chief. Kiran Chaudhari (Chaudhari”) is BP’s Deputy Planning Section Chief - GCRO Planning and Performance Manager and Walter’s immediate supervisor. Monique Boudreaux (“Boudreaux”) BP’s GCRO Planning Performance Coordinator at all material times.
10. For the Coast Guard the Federal On Scene Coordinator (FOSC) is the Coast Guard top official for the Gulf Coast clean up required due to the BP oil spill in April 2010. Captain Julia Hein was the FOSC from May 2011 to November 16, 2011. Upon information and belief, Commander Arex Avanni was the FOSC from November 17, 2011 to November 30, 2011. Upon information and belief, Commander Precourt has been the FOSC since December 1, 2011.
11. Walter was the BP GCRO State Planning Lead/GCIMT Branch Planning Section Lead. At this time, he was also beginning to transition into the GCIMT Deputy Planning Section Chief role.
12. Beginning in May and June, 2011 Walter began to convey his concerns that BP Mississippi operations were intentionally not following the plans for clean up delineated by the U.S. Government, the Coast Guard and the Department of Interior. These plans included, but were not limited to the Branch Action Plans, STR’s and the NPS-GUIS (National Park

Service Gulf Island National Seashore) environmental standards and requirements for cleaning. This was protected activity under LA R.S. 30:2027, et seq.

13. Cory Brown (“Brown”) BP’s Deputy Operations Branch Director/Response Lead conveyed that he was defying the STR by insisting that BP would was only picking tar balls and not other smaller oil debris as required by the STR, and as had been represented to the FOOSC by BP and required by environmental regulations.
14. In September 2011 Walter advised BP that he was required to let the stakeholders know that BP was not following the STR. This was protected activity under LA R.S. 30:2027, et seq.
15. BP began a malicious campaign to discredit him in retaliation for his opposition to BP refusal to reasonably follow environmental rules and regulations in the Gulf Coast Shoreline Clean-up.
16. Walter conveyed the Mississippi NPS Division Supervisor that the STR recommendation called for the NFT standard for non-amenity special management beaches was to be <1% visible surface oil and oiled debris and no SRB (tar balls) >2.5cm (~1 inch). Walter complained that BP was intentionally violating this environmental standard by ignoring the requirement at the beaches have <1% of the area having visible surface oil and oiled debris. This was protected activity under LA R.S. 30:2027, et seq.
17. On or about September 25 2011 the NPS (National Park Service) and Coast Guard scheduled a surprise visit to East Ship Island with Curt Sauer - the DOI Trustee for the Gulf Coast Incident Management Team (GCIMT), Carrie Horton - the NPS Division Supervisor and Lieutenant Delyte Montoya of the Coast Guard (Mississippi Coast Guard Branch Director) went by boat to East Ship Island off of the Mississippi Coast. These stake holders reported

verbally and in writing problems with BP's clean-up status.

18. BP's refused to follow the plan by picking and choosing what oil to pick up resulted in leaving oil behind was in violation of Environmental Rules and Regulations (including but not limited to the STR and the NPS-GUIS) , which set forth the required criteria that the clean up had to follow.
19. From approximately September 27, 2011 and the end of October 2011 Walter had a multiple disagreements with BP management regarding the fact that BP was taking short cuts in not following many environmental requirements including the Branch Action Plans incorporated forms, plans, processes and regulations set forth in ICS.
20. Although in mid October 2011 BP assured Walter that the relevant Gulf Coast Shoreline Clean-UP completion requirements and milestones were being met it shortly became obvious the contrary was true. By October 17, 2011 BP Operations once again began to deviate from the plan in spite of the fact that the USCG, NPS, OPS, PLN all were in agreement of priority of island segments to work due to environmental impact with eagles.
21. Walter took this priority list and translated and created a Branch Action Plan that was approved by FOSC. Shortly thereafter Walter found that BP Operations had blatantly and intentionally deviated and were not working segments of environmental concern.
22. Plaintiff reported this deviation from Environmental Rules and Regulations to Henley and Boudreaux. This was protected activity under LA R.S. 30:2027, et seq. Plaintiff also reported these deviations from Environmental Rules and Regulations to Chaudhari (BP's GCIMT Deputy Planning Section Chief and the GCRO Planning and Performance Manager).
23. Plaintiff rewrote plans to implement a course of action for BP to meet USCG, and NPS

directives and explanations to remove oil from area that would be populated by migratory birds. These birds are eagles and the Federal Act they are covered by prevents the BP clean-up operations once buffers are established.

24. BP Response Lead, Brown requested a meeting with himself, Walter and Henley in Henley's office. At this time Brown tried to harass Plaintiff. Plaintiff continued to insist that directives from USCG and NPS were to work specific areas due to environmental impact. Brown was defensive in regard to his failure in carrying out approved plans associated directives, regulations and approvals.
25. On November 3, 2011 the VP of Operations Fontenot spoke to Walter about the urgency of completing the response, transition to the USCG's districts. Her focus was to have the USCG be confident in BP because if that occurs a transition plan was being developed to annotate how USCG would transition the remaining clean up oversight from an active FOSC role to "legacy" Coast Guard oversight at the Coast Guard Districts. The IMT is never at Coast Guard Districts. In this scenario, oversight of remaining Clean up Activities would shift to "Legacy" oversight by the Coast Guard at their Coast Guard Districts instead of a physical and active IMT. Fontenot conveyed to Walter that his support was required on this as it would have an upward impact on BP stock prices.
26. Fontenot specifically threatened Walter stating that she "had people watching him that would call her" if he messed up by continuing to insist that BP strictly implement the STR in accordance with approved environmental plans and milestones.
27. On November 7, 2011 Walter had further disagreements with Brown, the BP Response Lead where he continued once again tried to change what Walter was going to send to NOLA.

28. Since the last Deep Dive presentation to assess the current status of BP's clean up operations to Unified Command there had been fluctuations of island segments that need to be cleaned and the number of segments that were completed. This presentation gave Unified Command a display of the current status of BP clean up operations and decisions were being based upon data presented.
29. On or about November 7, 2011 Mike Harrison did not like the data as to Mississippi because as he stated it "it did fit with the story" he wanted to tell to the Unified Command. He specifically -- without back up data -- insisted that the amount of segments that needed to be cleaned had to be lower than the data was showing.
30. Walter explained that BP Mississippi Operations "cleaned" the segments and they failed the Shoreline Clean Up Assessment Team's (SCAT) inspections, so the failed segments had to go back into the schedule to be re-cleaned as required by the STR and environmental requirements. At this point, Mike Harrison basically demanded that Walter falsify the data by changing the number of segments that still needed to be cleaned to a lower number. This was all based on money and had nothing to do with actually cleaning up the oil or meeting the STR or environmental requirements. Basically less work left, meant USCG may transition to Virtual IMT sooner if work is completed sooner
31. Walter's challenged BP's insistence that he misrepresent what was needed to complete BP's required response in Mississippi, especially since Mississippi at that time had the highest majority of items yet to be completely cleaned in accord with the STR and environmental requirements. This was protected activity under LA R.S. 30:2027, et seq.
32. At this point, Harrison was now manipulating the data and not telling the FOOSC the true

status of what is needed to be cleaned. All of this is in violation of the STR and environmental rules and regulations. When Walter challenged Harrison asking why Harrison did not want to tell the FOOSC the true number of segments that had failed and needed to be re cleaned, Harrison exclaimed, “that is not the story I want to tell”. Once again, Walter strongly opposed falsifying environmental data. This was protected activity under LA R.S. 30:2027, et seq.

33. On November 8, 2009 Walter was put on administrative leave pending investigation for no non retaliatory reason.
34. On or about November 9, 2011 Monique Boudreaux reported to Walter’s co-workers that he was on leave for personal reasons and they were not to contact him in any manner, however the real purpose for Walter’s being placed on leave was to give Boudreaux and others time to interview his co-workers to come up with pretextual reasons for his termination.
35. Upon information and belief, it was necessary to remove Walter on November 8, 2011 because BP did not want him to interfere with the targeted time of November 30, 2011 (approximately the date Commander Precourt was to take over as FOOSC) as the period for the important milestone as BP was planning and hoping to go to Virtual IMT at this time but they could not until approved by Coast Guard.
36. BP terminated Walter for pretextual reasons on Friday, December 9, 2011.
37. Plaintiff alleges that any reasons that BP alleges that purportedly would constitute a non-discriminatory reason for his termination are actually a pre-text for prohibited retaliation under the Louisiana Whistleblower Statue and under the Louisiana Environmental Whistleblower Statue.

38. Plaintiff alleges that each instance above of Plaintiff reporting and conveying that BP was now properly following STR and environmental requirements constitutes protected activity and Plaintiff alleges that each of these instances is protected activity under the Louisiana Environmental Whistleblower Act La.R.S. 30:2027 *et al.*
39. There is no requirement that the potential violations must be later determined to have actual violation of law, or to have been prosecuted by any government entity. All that is needed is that the employee's disclosure(s) (or threatened disclosure) involved incident(s) that – at the time – the “employee reasonably ... [believed were] in violation of an environmental law, rule, or regulation.”
40. The purpose of La. R.S. 30:2027(A)(1) is to encourage employee disclosures, thus, whether the whistleblower's “protected activity” is a single incident or multiple incidents, there is no limitation on the protection to be given him.
41. Also, the scope of La. R.S. 30:2027 encompasses the disclosure of violations of federal, state, and local laws.
42. BP is liable to Walter for reprisals, including wrongful termination which was motivated by his opposition to BP failure to follow the approved STR and environmental requirements.
43. Defendant is liable unto Plaintiff for retaliatory termination in violation of *La. R.S. 30:2027* for triple damages which include three years of lost wages, lost anticipated wages due to a wage increase, loss of anticipated wages which would have resulted from a lost promotion, and if the period of damages exceeds three years, Plaintiff shall thereafter be entitled to actual damages. In addition to the above “damages”, BP shall also be liable to Plaintiff for any property loss as a result of said lost wages, lost benefits, and any physical or emotional

damage resulting therefrom.

44. Defendant is liable unto Plaintiff for retaliatory termination in violation of La. R.S. 30:2027, *et. seq* due to his opposition and refusal to participate in employment practices that violated said act and as such, BP is liable unto Plaintiff for:

- A. Triple damages which include three years of lost wages, lost anticipated wages due to a wage increase, and, loss of anticipated wages which would have resulted from a lost promotion;
- B. Wages in Back-pay (including benefits and wages under La. R.S. 23:631): and, Front-pay wages (including benefits as reinstatement is impractical);
- C. Mental anguish and depression;
- D. Humiliation/embarrassment;
- E. Loss of enjoyment of life;
- F. Medical expenses;
- G. Prejudgment interest;
- H. Attorney's fees;
- I. Costs of these proceedings; and
- J. Any injunctive relief enjoining defendants from interfering with plaintiff's efforts to obtain future employment and enjoining and permanently restraining these violations of federal law.

45. As alleged herein, Plaintiff alleges that there was no good cause to terminate him and any reason(s) stated by Defendant are a pretext for retaliatory animus in retaliation for protected activity under La.R.S. 30:2027, *et. seq.*,

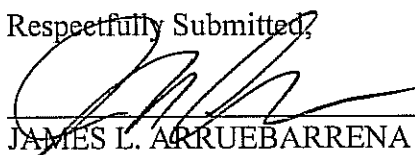
46. Plaintiff reserves his right to supplement and amend this Complaint upon the discovery of additional facts.

47. Plaintiff shows amicable demand to no avail.

VII. JURY DEMAND

48. Plaintiff demands trial by jury of all issues in this action.

Respectfully Submitted,



JAMES L. ARRUEBARRENA (#22235)
James L. Arruebarrena, LLC
1010 Common Street, Suite 3000
New Orleans, Louisiana 70112
Telephone (504) 525-2520
Facsimile (504) 581-7083

And

RACHEL MARTIN-DECKELMANN (#32195)
James L. Arruebarrena, LLC
1010 Common Street, Suite 3000
New Orleans, Louisiana 70112
Telephone (504) 212-4166
Facsimile (504) 581-7083

Attorneys for August Walter

PLEASE SERVE

BP America Inc.

through its registered agent for service of process

C T CORPORATION SYSTEM
5615 CORPORATE BLVD., STE. 400B
BATON ROUGE, LA 70808