

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
EL DORADO DIVISION

UNITED STATES OF AMERICA *ex rel.*
DANNY MICHAEL RAY and WILLIAM BERRY

PLAINTIFFS

VS.

CASE NO. 1:09-CV-01016

AMERICAN FUEL CELL AND COATED
FABRICS COMPANY; and THE ZODIAC GROUP

DEFENDANTS

ORDER

Before the Court is Defendant American Fuel Cell and Coated Fabrics Company's ("Amfuel") Motion to Dismiss (ECF No. 58). Plaintiffs have filed a response to the motion. (ECF No. 59). The matter is ripe for the Court's consideration.

In March 2009, Plaintiffs brought this action against Defendants alleging that (1) Defendants violated the False Claims Act ("FCA") by knowingly selling substandard goods to the government; (2) Defendants violated the "whistleblower" provision of the FCA by retaliating against Relator Ray for engaging in a protected activity under Act; and (3) Defendants breached Relator Ray's employment contract by firing him without cause.¹

In August 2012, Defendants filed a Motion to Dismiss Plaintiffs' Amended Complaint. (ECF No. 38). Subsequent to the Motion to Dismiss being filed, Plaintiffs requested leave to amend their Amended Complaint to address concerns raised in Defendants' motion. On March 4, 2013, the Court granted the motion to dismiss as to Plaintiffs' *qui tam* claim under the False Claims Act. The Court denied Plaintiffs' request to amend the claim. The Court denied the

¹ These three claims are hereinafter referred to as (1) the FCA claim, (2) the Retaliation claim, and (3) the Breach of Contract claim.

motion to dismiss and granted the motion to amend as to Plaintiffs' retaliation and breach of contract claims. More specifically, the Court held that Plaintiffs' proposed amendments cured any deficiencies in the two remaining claims and that the claims were therefore sufficient to survive dismissal.

As directed, Plaintiffs filed their Second Amended Complaint on November 15, 2013. (ECF No. 56). Amfuel filed an Answer to the Second Amended Complaint on November 20, 2013 and subsequently filed the present Motion to Dismiss. The motion makes essentially the same arguments that were addressed in the Court's previous Order. The Court has already considered the claims and factual allegations made in the Second Amended Complaint and has found them sufficient to survive a motion to dismiss.² (ECF No. 52). Accordingly, the motion should be and hereby is **DENIED**. Plaintiffs' breach of contract and retaliation claims may move forward.

IT IS SO ORDERED, this 12th day of May, 2014.

/s/ Susan O. Hickey
Susan O. Hickey
United States District Judge

² The Court notes that Plaintiffs have included their *qui tam* claim in the Second Amended Complaint despite the fact that it has previously been dismissed. Plaintiffs state that its inclusion in the Second Amended Complaint is solely for purposes of preservation. The claim was dismissed on March 4, 2013 and it remains dismissed. (ECF No. 52 & 55).