UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Law Judge

Morton B. Margulies

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| In the Matter Of | ) | Docket No. 93-01-PF |
| LLOYD P. ZERR | ) | ASLBP No. 93-673-01-PF |

NRC REPLY TO DEFENDANT'S CLOSING BRIEF

The NRC hereby responds to the "DEFENDANT'S CLOSING BRIEF." The Defendant's brief is founded on mischaracterization of the record and unsupported assertions and inferences. In short, it tells a story that has no substantiation.

As explained in the following refutation of the numbered paragraphs of Defendant's brief, Defendant's arguments make no headway in rationalizing his submission of twenty-three false claims to the NRC as set forth in the NRC's complaint and proven by the evidence introduced at trial.

Discussion and Argument

1 & 2. Defendant continues to argue that this proceeding is in violation of his "[C]onstitutional privilege against being twice prosecuted for the same alleged offense." This argument is no more valid today then it was when this

tribunal denied Defendant's motion to dismiss on these grounds earlier in this proceeding. RULING ON DEFENDANT'S MOTION TO DISMISS, September 20, 1993. Defendant asserts that "[t]he testimony of the investigator in this matter . . . supports the position of the Defendant that this action is identical to the Criminal Action which was fully prosecuted by the United States Attorney, and resulted in a dismissal of the action consistent with a Plea Agreement involving pretrial diversion." (emphasis added). Defendant's statements that the criminal case was "prosecuted" and resulted in a "plea agreement" are incorrect. Mr. Zerr was never prosecuted by the United States Attorney's Office in Georgia. A pretrial diversion agreement resulting in the dismissal of an indictment is not a prosecution and does not trigger the double jeopardy clause to the Constitution. NRC'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS at 3-7. This court reached this conclusion when it denied Defendant's motion. RULING ON DEFENDANT'S MOTION TO DISMISS at 10.

The Defendant has shown no evidence of a plea agreement in the criminal case in Georgia because there was none. A plea agreement involves an entry of judgement and results in the Defendant having a criminal record; it also triggers the double jeopardy clause. A pretrial diversion agreement, however, is different; its results in no entry of judgment and no criminal record if the conditions of the diversion agreement are met. Fatal to Defendant's argument, it does not trigger the double jeopardy clause. RULING ON DEFENDANT'S MOTION TO DISMISS at 9-

15; see also NRC'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS at 3-7.

Defendant's argument that "this action is identical to the Criminal Action" is also factually and legally wrong. This action is a civil action with a different burden of proof (preponderance of the evidence as opposed to beyond a reasonable doubt) and different remedies than a criminal action. As described below, that Congress contemplated such an action is evidenced by language in the statute that an individual who submits false claims to the government shall be subject to damages under this Act "in addition to any other remedy that may be prescribed by law. . . ." 31 U.S.C. § 3802(a)(1).

3. Defendant's treatment of the legislative intent of the Program Fraud Civil Remedies Act is incorrect. According to Defendant's analysis, "the legislative intent for the statute is clearly stated that this section is intended to be applicable when no criminal proceeding takes place. . . . [T]he reason for the creation of this statute was the inability or unwillingness to criminally prosecute these charges and that, therefore, this civil remedy was made available as an alternative." Like Defendant's entire closing brief, there is no citation to any authority for these statements.

The legislative history of the Program Fraud Civil Remedies Act demonstrates that Congress envisioned successive actions against individuals who perpetrate fraud against the

government. One of the underpinnings of the Act was Congress' desire to create a procedure for agencies to bring fraud cases against individuals who submit false claims or statements to the government because the Department of Justice historically had declined to prosecute these cases due to lack of resources. However, as shown by the plain language in the Act, Congress also envisioned a civil remedy that could be used "in addition to other remedies already provided by law." 31 U.S.C. § 3802(a)(1).

Moreover, the Supreme Court has heard several cases involving subsequent civil actions under the False Claims Act following criminal prosecution for the same fraudulent acts. United States v. Halper, 490 U.S. 435 (1989) (citing cases).[1] The Court's focus in these cases was the limit that the double jeopardy clause put on subsequent civil actions, not the ability to bring them. Of course, as stated earlier, there was no criminal prosecution triggering the double jeopardy clause in this case.

4. The Defendant claims that "[t]he evidence in this case is clear that there was no intent to defraud anyone." The Defendant bases this contention on the proposition that his prior travel had been short-term in nature and he was never advised of travel regulations pertaining to long-term travel. The

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[1] The Program Fraud Civil Remedies Act is the administrative counterpart to the False Claims Act. S. Rep. No. 99-212, 99th Cong., 1st Sess. 10 (1985).

Defendant's argument is flawed in both its legal and factual assumptions.

First, the Defendant seems to persist in suggesting that the NRC must prove an intent to defraud in the sense of intent with deliberate knowledge of violation of the law, even though the Defendant was expressly disabused of this erroneous notion during opening argument. See Tr. 198, 201-02. The NRC need not prove that the Defendant knew that he was violating NRC travel regulations. The NRC need only prove that the subject claims were made with actual knowledge that the claims were false, or in deliberate ignorance or reckless disregard of their truth or falsity. 31 U.S.C. § 3801(a)(5). No proof of specific intent to defraud is required. Id.

As the NRC has repeatedly explained, the simple, fundamental issues in this case are: (1) whether or not the Defendant knew or had reason to know that he had not incurred the claimed charges for rental furniture, car rental and other travel charges for which he sought reimbursement; and, (2) whether the Defendant worked the hours which he claimed to have worked. For example, whether or not it was knowingly true or false that the Defendant was incurring expenses for using a personally-owned vehicle during the trips from Atlanta to other locations while in Region II does not turn on any aspect of travel regulations. By its very nature, that fundamental question is resolved quite conclusively by the Defendant's knowledge of whether he was using a personally-owned vehicle and his admission that he was not.

Similarly, the Defendant's claimed approval for purchase of pots and pans is entirely irrelevant. He did not submit a claim for the cost of purchase of such pots and pans.

Second, even assuming arguendo the relevancy of the travel or time and attendance regulations, the Defendant has made no effort to show how such regulations excuse the fundamental facts of submission of specific expenses and work hours which were false. At bottom, of course, there is no such defense in the regulations. For instance, Ms. Carolyn Miller, Chief of NRC's Travel Branch, explained that a person is allowed actual expenses for lodging up to a certain prescribed amount, and a flat allowance, without the need for substantiation, for meals and incidental expenses. Tr. 791-92. This rule does not differ, whether an employee is on one-day or extended travel. Id. at 792. Moreover, while the regulations authorize rental of furniture, purchase of furniture is not an allowable expense. Tr. 797 (Miller); see also Tr. 547 (Corvelli). The fact that extended travel involves reduced per diem rates, Tr. 770-71 (Miller), which are clearly stated on the travel authorizations (Exs. 40-41), offers no avenue for rationalization of the submission of false expenditures for reimbursement.

Third, despite Defendant's denials that anyone ever explained travel procedures to him (Tr. 495-96), the more credible testimony establishes that he was given an orientation in travel prior to his rotation. Specifically, Mr. Frank Gillespie, Director of Policy, Planning, and Program Management

and Analysis Staff, in the NRC's Office of Nuclear Reactor Regulation, testified that under his supervision there had been extensive individualized work with each intern in the initial class of interns (including Lloyd Zerr) on travel arrangements, including meetings with the NRC travel office staff. Tr. 922. In addition, Mr. Ellis Merschoff testified that it had been his policy to sit down with each intern and emphasize the extreme importance of care in regard to time and attendance, travel and telephone use. Tr. 837.

Fourth, the Defendant's own actions and admissions belie the supposed ignorance of the regulations. For instance, Defendant was aware that the per diem for lodging was a maximum up to which an employee could only be reimbursed for actual expenses. Tr. 400-01, 404. His submissions of leases and the Cort rental payment coupons on his vouchers to Headquarters, and his submission of hotel receipts on his vouchers to Region II, corroborate this understanding.

5. The Defendant also suggests that his alleged lack of "knowledge" is supported by a failure of travel office witnesses to provide quick recitation of the meaning of language in the regulations. In fact, however, there has been no confusion or inadequacy of understanding on the fundamental rules that an employee can only get reimbursement for the actual lodging costs incurred up to the maximum per diem, as noted above.

In Defendant's view, he acted no differently than Alan Herdt, an NRC Supervisor of Mr. Zerr, in regard to the submission of travel claims. Defendant draws this conclusion from his characterization of Alan Herdt's testimony as to the effect that Mr. Herdt simply submitted everything relevant to the travel office and let it figure out the appropriate amount of reimbursement.

Contrary to Defendant's assertion, Mr. Herdt's testimony supports rather than excuses a finding that the Defendant knew or should have known that his claims were false. For example, Mr. Herdt testified that he was not familiar with the nuances of travel as it related to overtime. Tr. 606. However, if someone requested overtime for time while travelling, he would normally check with personnel people to determine whether such time could be claimed. Id. Defendant, on the other hand, has not presented any evidence that he: (1) checked with agency experts on travel or overtime to determine whether he could count as overtime hours worked his commuting time to and from the Hatch plant; (2) advised his supervisors that he was claiming commuting time as travel time prior to making such claims; or (3) identified a provision of NRC regulations permitting such a claim.[2] In any event, Defendant's effort to

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[2] Had the question been raised and someone such as Carolyn Miller, Chief of NRC's Travel Branch, been consulted, the advice would have been that such commuting time to a temporary duty station could not be counted as hours of work, Tr. 772, 792-96 (Miller), absent unusual circumstances which clearly do not apply to Mr. Zerr's regular commuting time. See Ex. 70 at 1837-38.

rely on Mr. Herdt's testimony in defense of the travel voucher claims is particularly ludicrous since, not surprisingly, Mr. Herdt never said that he had submitted, or would have approved the submission of, phony evidence of alleged actual expenditures for reimbursement.

6. The Defendant contends that his denial of any intent to defraud is uncontradicted and indeed corroborated by his provision of all documentation to the NRC. The evidence, however, including many of Mr. Zerr's own acts, establishes precisely the opposite. For instance, the submission of a substantially altered lease agreement and of payment coupons for returned furniture reveal quite dramatically a deliberate pattern of fraud. It was left to the NRC to uncover, for instance, the fact of the return of the rental furniture, the actual amount of rent in Vidalia, Georgia, and the actual amount of the Hertz car rental charges.

7. The Defendant continues to confuse the issues relating to counts charging him with false claims relating to his car rental from the Hertz corporation. The complaint charges false claims for car rental with respect to Defendant's second rental agreement with Hertz commencing on February 20, 1990, not his first agreement executed on August 25, 1989. As fully explained in the NRC's post-trial brief, the Defendant was put on notice in several ways that the price Hertz was charging him for

his rental was lower than what he was claiming from the NRC. NRC Br. at 37 n.18; see generally NRC Br. at 37-39. The fact the Defendant executed and signed three documents with Hertz relating to the second car rental and all three documents contained the lower rental rate shows that Mr. Zerr had actual knowledge of the rate he was paying and therefore had actual knowledge that the claims he was submitting to the NRC were false. NRC Br. at 38. While Defendant's statement that "he made payments [to his credit card company] in general amounts to the extent of his ability and he testified that he did not review the charge bills" is further evidence of his reckless disregard and deliberate ignorance of the truth or falsity of his car rental claims.

8. Defendant makes the irrelevant assertions that the car he rented under the second rental contract with Hertz was "less costly . . . for a better quality vehicle," and that "the vehicle was the one delivered by Hertz, not the one chosen by Mr. Zerr." Nevertheless, this second assertion is directly contradicted by the Hertz representative who testified at trial, Ms. Charlynn Wallis, and the evidence introduced at trial. Ms. Wallis testified, after reviewing NRC Ex. 24 at 868, that Mr. Zerr requested and was given a higher quality car. Tr. 523 (Wallis).

The NRC does not understand the relevancy or implication of Defendant's statement that "[t]he vehicle which he used was consistent with Government Travel Regulations and the

cost of that vehicle was appropriate." However, what is clear, and highly relevant, is the fact that the only reimbursable cost for the rental of the Hertz car was the actual cost Mr. Zerr incurred.

9. The Defendant further contends that, without any training or background knowledge whatsoever, he simply submitted travel vouchers to Region II and to Headquarters, assuming that the travel office and supervising officials would apportion payments correctly.[3] He also claims that the approval of prior

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[3] Of course, the NRC agrees that the Defendant should have, and did, submit vouchers to Region II for additional travel from Atlanta for Region II, while the Defendant was serving the first part of his rotation in Atlanta. See NRC Br. at 54-62; NRC Ex. 31, NRC Ex. 50 at 11 (II-87) and NRC Ex. 51 at 9 (Further Answer ("FA") No. 87), relating to Count XV; NRC Ex. 32, NRC Ex. 50 at 12 (II-95) and NRC Ex. 51 at 9 (FA No. 95), relating to Count XVI; NRC Ex. 33, NRC Ex. 50 at 12 (II-101) and NRC Ex. 51 at 10 (FA No. 101), relating to Count XVII; NRC Ex. 34, NRC Ex. 50 at 13 (II-107) and NRC Ex. 51 at 10 (FA No. 107), relating to Count XVIII; NRC Ex. 35, NRC Ex. 50 at 13 (II-113) and NRC Ex. 51 at 10 (FA No. 113), relating to Count XIX; NRC Ex. 36, NRC Ex. 50 at 14 (II-119) and NRC Ex. 51 at 10 (FA No. 119), relating to Count XX; NRC Ex. 37, NRC Ex. 50 at 14 (II-125) and NRC Ex. 51 at 11 (FA No. 125), relating to Count XXI; NRC Ex. 38, NRC Ex. 50 at 15 (II-131) and NRC Ex. 51 at 11 (FA No. 131), relating to Count XXII; and NRC Ex. 39, NRC Ex. 50 at 15 (II-137) and NRC Ex. 51 at 11 (FA No. 137), relating to Count XXIII. However, as explained in the in the NRC's initial brief, these vouchers included claims for the mileage rate for use of a personally owned vehicle, which the Defendant was not in fact using, and per diem claims for meals and incidental expenses, for which the Defendant was also claiming per diem in vouchers to NRC Headquarters. We note that the initial statement of the amount of each voucher to Region II in the first proposed finding of fact in the initial brief for Counts 18 to 23 (PFF XVIII-1, XIX-1, XX-1, XXI-1, XXII-1, XXIII-1) refers only to the total of these two portions of the vouchers, not to the total amount of the voucher.

vouchers led him to rely on those vouchers and their approval as a model for future submissions.

First, the Defendant was not a neophyte in travel. He had been on Government travel on several occasions prior to going to Atlanta and knew, for instance, that he could only claim reimbursement of actual lodging costs, Tr. 400-01 (Zerr), and that maximum reimbursement rates could vary by city or location of travel. Tr. 452-53 (Zerr). To a travel office representative, he appeared knowledgeable in travel regulations. Tr. 544 (Corvelli). In addition, as noted above, the evidence indicates that Mr. Zerr was personally advised regarding travel matters before his extended rotation to Region II. Tr. 922 (Gillespie).

Second, the Defendant's repeated success in getting false claims approved resulted from the fact that the Defendant's claims were believed or assumed to be true, not because of supervisory knowledge or approval of their falsity. The NRC perceives that the Defendant was emboldened by his early successes, inasmuch as the pattern of fraudulent claims continued through to his last submission for the rotation on December 24, 1990.

10 & 11. The NRC proved at trial by a preponderance of the evidence that (1) Mr. Zerr never called the NRC travel office to inquire about purchasing pots, pans, and linens, (2) in the event that this call was placed, Ms. Corvelli's testimony (that

she never would have told Mr. Zerr or any other NRC employee that they could purchase household items instead of renting them and prorate this cost over the length of the travel period because this clearly went against government travel regulations) refutes any notion that Mr. Zerr received this advice;[4] moreover, Mr. Zerr's failure to follow this alleged advice by prorating these costs over a period of months on his vouchers further supports the NRC's contention that Mr. Zerr is inventing excuses for his fraudulent acts, and (3) even assuming arguendo that Mr. Zerr received these instructions, such a limited direction provided no support for his purchasing furniture and appliances instead of renting them. Moreover, Defendant's assertion that he "purchased the items [furniture and appliances] and spread the cost out doing exactly what he had previously done with the pots and pans and what had been previously approved by the Government for the pots and pans" is contradicted by his own act of not prorating the cost for these items on his vouchers.

Defendant claims that "the Government spent no money whatsoever on furniture. There were no false claims made with respect to furniture because there was nothing false about them. . . . There was no payment made with respect to furniture at all." This argument is specious. Defendant is correct in stating that the government did not reimburse Mr. Zerr's purchases. This was so because Defendant did not claim

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[4] Mr. Zerr thinks he spoke to Ms. Corvelli on this subject. Tr. 405 (Zerr).

reimbursement for these purchases. The government did, however, reimburse claims for furniture rental which Defendant did claim. These claims were false because Mr. Zerr was not renting furniture during the times he claimed reimbursement for furniture rental.

Defendant seems to blame the NRC for his fraudulent acts by asserting that "[n]o one said anything when he submitted the vouchers. [T]hey were approved by every person within the level of responsibility." This argument suggests that Mr. Zerr's fraudulent acts should be excused because the NRC did not discover that Mr. Zerr was submitting false claims at the inception of Mr. Zerr's scheme for defrauding the government. To be sure, the NRC's trust that its employees will claim entitlement to pay only for hours actually worked and belief that documents submitted in support of travel voucher are genuine, may occasionally, as in this case, be misplaced. This, however, in no way excuses Mr. Zerr's fraudulent acts. Any argument that the Defendant could rely on the NRC's early approval of undiscovered fraudulent travel vouchers and overtime submissions is ridiculous.

Finally, Mr. Zerr does not do "exactly what Mr. Herdt does about travel." Mr. Herdt does not submit phony travel receipts and inflated work hours to the NRC. Defendant repeatedly makes this assertion throughout his closing brief and the NRC strongly objects to this careless and baseless analogy.

12. The Defendant continues to maintain that he appropriately billed the NRC for his housing costs in Vidalia, Georgia, since he was responsible for maintenance of the house, grounds and pool, as well as $600 in rent, for a total monthly cost of $850.00. He also contends that the billing has been recognized as appropriate by virtue of the NRC's payment of the additional costs. The Defendant's argument ignores, of course, the fact that the Defendant actually billed the NRC on the basis of $875 in rent, as well as additional miscellaneous expenditures such as extermination and lawn care. NRC Ex. 30 at 175, 185; NRC Ex. 25 at 162-63.

The Defendant apparently relies on the decision to credit the Defendant with certain miscellaneous costs while effecting restitution in closing out the Defendant's outstanding travel vouchers. However, those credits in no way undo the fact that the Defendant submitted an expired rental agreement for $875.00 for an apartment in Atlanta as the housing cost for April, 1990, when he was actually living in Vidalia and the submission of an altered lease agreement for reimbursement of rent of $875.00 a month from May through September, 1990.

13. In support of the denial of impropriety in his overtime submissions, the Defendant cites a lack of understanding of the "first 40" hourly billing system. At the outset, it should be noted that John Menning, the Senior Resident Inspector at Hatch when the Defendant arrived, initiated a discussion with

the Defendant about time and attendance reporting, but was advised by the Defendant that he was under a different billing system funded by Headquarters. Tr. 306-07, 324 (Menning). This essentially terminated Mr. Menning's discussion of time and attendance with the Defendant. Tr. 324. If the Defendant had needed instruction in the first 40-hour system, he should have requested it. There is no evidence that his Region II supervisors or fellow employees at Hatch would have refused to provide it. In any event, when it came time to submit hours of work and overtime claims, Defendant's overtime submissions, seeking overtime payment for each hour of claimed work after the first forty hours each week, demonstrated the Defendant's clear understanding of the first forty-system. NRC Exs. 1, 4 and 6.

The Defendant also refers to alleged pressures of endeavoring to perform allegedly impossible job demands at Hatch. First, while the Defendant was afforded the opportunity to pursue his desire to become qualified as a resident inspector while participating in the intern program, it was clearly not required that he become certified. Tr. 680-82 (Brockman); Tr. 843 (Merschoff). This was simply a special opportunity made available to the Defendant at his initiative. Tr. 681-83 (Brockman). Second, while Mr. Kenneth Brockman, a Region II supervisor, anticipated and approved overtime in pursuit of the qualifications, Defendant misstates the record by stating that Mr. Brockman thought that the Defendant had been given an impossible assignment. Mr. Brockman did testify to uncertainty

about whether the qualification aspect of the work at Hatch could be completed, Tr. 730 (Brockman), but he and other Region II management had agreed the Defendant could pursue the task because of the probability of success resulting from the Defendant's prior experience with the NRC and with the Navy. Tr. 682 (Brockman); see also Tr. 844-848 (Merschoff).

14. On the issues of the hours that the Defendant worked, the Defendant also refers to a special project for Mr. Brockman that may have necessitated work outside the protected area at the plant. As explained by the NRC in its initial brief, Mr. Brockman simply hypothesized that the project could have necessitated an above-average amount of time outside the protected area. NRC Br. at 14-15. Even if it did, the NRC does not deny Mr. Zerr credit for time spent outside the protected area during the normal working day. NRC Br. at 17. Moreover, the computerized history of his protected area access and egress, together with the evidence of the work schedule of Hatch plant personnel and the Defendant's inability to identify any specific activity or time of work outside the protected area beyond the recorded history of his first entry and last egress each day, clearly and convincingly establish the lack of any foundation for the Defendant's reliance on the project as an explanation for the false overtime claims.

15. Again, the Defendant refers to the alleged pressures of completing his qualifications manual. The NRC's general response to this argument is provided in the discussion above regarding Defendant's paragraph 13.

The Defendant states further, however, that Mr. Musser, an NRC witness, had spent thirteen months becoming qualified, while Mr. Zerr had a mere six months to do so. This adds nothing to the Defendant's case. In fact, Mr. Musser himself testified that he only spent 30 to 40 percent of his time on qualification requirements. Tr. 230-31. In addition, Mr. Merschoff, who was coordinator of Defendant's assignments while in Region II (Tr. 834), testified that the Defendant started on his qualifications before he went to Hatch and should have started on the first day of his one-year tour in Region II. Tr. 844.

16. The Defendant is grossly mistaken in his suggestion that the United States Attorney and NRC officials have conceded that the Defendant's overtime claims were appropriate and authorized payment for the claimed hours. First, the overtime claims were paid in earnings to the Defendant at the time they were made. NRC Br. at 23 (PFF I-3), 27 (PFF II-2) and 30 (PFF III-2). Second, the Defendant apparently relies on the decision not to demand restitution of commuting hours in effecting restitution under the Pretrial Diversion Agreement.[5]

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[5] For purposes of the restitution in the criminal case under the direction of the Assistant United States Attorney (Tr. 879, 880-86 (Fields) (NRC Ex. 58), the amount of the false

As a result, the NRC has not recovered to date approximately one-third of the amount of its payments on the false overtime claims. In this proceeding, the NRC and the Defendant have had the opportunity to present all of the evidence on whether the Defendant is liable for his overtime submissions and that evidence, along with the evidence of a contemporaneous pattern of false travel claims, conclusively establishes the Defendant's full liability.

17. No argument or assertion made by the Defendant is more contrary to the facts of this case than his statement that "Lloyd Zerr never hid one fact from the Government." Lloyd Zerr hid every fact from the government. He rented furniture, returned it almost immediately, kept the payment coupons, and submitted these coupons to the government claiming that he was still renting this furniture. Mr. Zerr hid the fact that he was not renting furniture from the government.

Mr. Zerr rented a car in Atlanta at a cheaper rate than he had previously rented a car for in Maryland. However, Mr. Zerr claimed the higher Maryland rate instead of the lower Atlanta rate he was paying and attached the Maryland contract to support his claim. Mr. Zerr knew he was paying a lower rate. He

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overtime claims recovered was reduced by $645.58 (from $2,127.15 to $1,481.67), i.e., a reduction of $195.60 for Pay Period 9 (10 days at the plant), $215.16 for Pay Period 10 (11 days at the plant) and $234.72 for Pay Period 11 (12 days at the plant). See NRC Ex. 58 at 1197, 1200.

hid this fact from the government so that he could claim reimbursement above that which he was actually incurring.

Mr. Zerr rented a house in Vidalia, Georgia at a monthly rental rate of $600.00. He doctored the lease to show a monthly rental price of $850.00 and submitted it to the NRC in order to claim reimbursement in excess of the rent he was actually paying. He hid the actual rental price from the government in order to obtain money to which he was not entitled.

18 & 19. Mr. Zerr makes several inferences concerning Mr. Leonard Wert and other NRC employees: "Perhaps there was some personality conflict with the staff at Hatch and Mr. Zerr. . . . [A] new supervisor came intending to show his seniority. . . . When this new Senior Inspector questioned the amount of overtime and proceeded to begin this entire investigation, for reasons known only to that new Senior Inspector. . . . [T]his new person decided to show his new found authority." The NRC strongly objects to the Defendant, without any good faith basis at all and without any evidence or testimony in the record to support these statements, making assertions and inferences regarding Mr. Wert. Mr. Wert did nothing wrong. He simply reported what he perceived to be, and what turned out to be, a wrong. This was his duty, as it is the duty of every government employee to object to something that is simply wrong. Mr. Zerr is again trying to find someone to blame when he should be blaming himself. No one forced Mr. Zerr to commit these acts. Instead of taking

responsibility for what he alone did, he is looking for someone to blame. Mr. Zerr should blame no one other than himself and should suffer the consequences of his own acts.

20. Finally, the Defendant declares that he has suffered immensely without reason and is owed substantial sums from the NRC for hours worked and expenses incurred. These are vague and unsubstantiated musings that do not do justice to the overwhelming testimonial and documentary evidence amassed in support of the NRC's charges. The Defendant's broad and lengthy pattern of submission of false claims led the NRC to pay the Defendant substantial sums to which he was not entitled. His stratagems caused the NRC to expend significant resources to uncover the existence, breadth and length of his effort at personal enrichment through false travel and overtime claims.

The restitution obtained by the NRC to date is nothing more than some of the money that Defendant had obtained from the NRC through false claims. As explained in the NRC's initial brief, the NRC has incurred significant costs of investigation, and those costs along with many other aggravating factors, warrant

the imposition of a double assessment of paid false claims and civil penalties at or near the maximum.

Respectfully submitted,

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DATED: February 7, 1994

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "NRC REPLY TO DEFENDANT'S CLOSING BRIEF" were served upon the following persons by U.S. mail, first class, except as indicated by an asterisk, through deposit in the NRC internal mail system, this 7th day of February, 1994.

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