

**IN THE UNITED STATES DISTRICT  
COURT FOR THE DISTRICT OF SOUTH  
CAROLINA AIKEN DIVISION**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
<i>ex rel.</i> PETER MICHAEL WANCO,	)	
JR.,	)	
	)	
Plaintiff-Relator,	)	
	)	
v.	)	Cause No.: 1:19-CV-00196-JMC
	)	
MOX SERVICES, LLC, and ORANO	)	
FEDERAL SERVICES LLC,	)	
	)	
Defendants.	)	
	)	

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**DEFENDANTS’ ANSWER**

Come now the Defendants, MOX Services, LLC and Orano Federal Services LLC, (“hereinafter collectively “MOX”) by counsel, and for their Answer to the Plaintiff’s Complaint, would show the Court as follows:

**INTRODUCTION.**

1. Plaintiff-Relator Peter Michael Wanco, Jr. brings this Complaint on behalf of himself and the United States of America pursuant to the federal False Claims Act (FCA), 31 U.S.C. §§ 3729 *et seq.*, against Defendants Orano Federal Services, LLC (Orano) and Defendant MOX Services, LLC – a partnership between Orano and non-defendant CB&I Project Services Group, LLC – to recover damages and civil penalties arising from a false claims scheme that has defrauded the U.S. Department of Energy through the fraudulent payment of relocation bonuses to workers that never intended to relocate in order to entice those workers to accept employment with Defendants in furtherance of their contract at DOE’s Savannah River Site (SRS).

**Answer:** MOX admits that the Plaintiff brings this action “pursuant to the federal False Claims Act, 31 U.S.C. § 3729 *et seq.*” against the Defendants. MOX denies the remaining allegations contained in rhetorical paragraph one of the Plaintiff’s Complaint and would specifically note that the United States has declined to be involved in this case.

2. Additionally, Mr. Wanco also brings this action pursuant to 31 U.S.C. § 3730(h) to recover damages arising from retaliatory employment conduct and constructive discharge following Mr. Wanco’s refusal to approve inspection protocols he believed inadequate to ensure federal regulations and professional standards were met in the construction of SRS facilities.

**Answer:** MOX admits that the Plaintiff purports to bring this action “pursuant to 31 U.S.C. § 3730(h)” against the Defendants. MOX denies the remaining allegations contained in rhetorical paragraph two of the Plaintiff’s Complaint.

3. Mr. Wanco brings this *qui tam* action on behalf of DOE and its semi-autonomous agency, the National Nuclear Security Administration (NNSA), to end Defendants’ fraud and recoup monies wrongfully paid by DOE, plus treble damages and statutory penalties, and on his own behalf to recover damages suffered from his loss of employment, including double backpay, attorneys’ fees, and costs. Plaintiff-Relator Peter Michael Wanco, Jr., would respectfully show the Court as follows:

**Answer:** MOX denies the allegations contained in rhetorical paragraph three of the Plaintiff’s Complaint.

#### **JURISDICTION AND VENUE.**

4. This action arises under the FCA. The Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 & 1345 and 31 U.S.C. §§3730(b) & 3732(a).

**Answer:** MOX admits that the Plaintiff brings this action “under the FCA” and that the “Court has subject matter jurisdiction” of FCA claims. MOX denies the remaining allegations contained in rhetorical paragraph four of the Plaintiff’s Complaint.

5. The court has personal jurisdiction over Defendants because Defendants transact business in this District and numerous acts prohibited by federal law occurred in this District.

**Answer:** MOX admits that the Court has personal jurisdiction over MOX. MOX denies the remaining allegations contained in rhetorical paragraph five of the Plaintiff’s Complaint.

6. Venue is proper in this District pursuant to 31 U.S.C. § 3732(a).

**Answer:** MOX admits the allegations contained in rhetorical paragraph six of the Plaintiff’s Complaint.

7. Mr. Wanco’s claims and this Complaint are not based upon prior public disclosures of allegations or transactions in a federal criminal, civil, or administrative hearing in which the Government or its agent is a party; in a congressional, Government Accountability Office, or other federal report, hearing, audit, or investigation; or from the news media. To the extent that there has been a public disclosure unknown to Mr. Wanco, he is the “original source” within the meaning of 31 U.S.C. § 3730(4)(B) and/or the public disclosure is a result of Plaintiff-Relator voluntarily providing this information to the United States Government prior to filing this *qui tam* action.

**Answer:** MOX denies the allegations contained in rhetorical paragraph seven of the Plaintiff’s Complaint.

### **PARTIES.**

8. Plaintiff United States of America and its department, the U.S. Department of Energy (DOE) is the victim of the fraud described here and the real party in interest as to Mr.

Wanco's claims under 31 U.S.C. § 3729. Specifically, the National Nuclear Security Administration (NNSA) is a semi-autonomous agency within DOE responsible for enhancing national security through the military application of nuclear science. To that end, NNSA has contracted with Defendant MOX Services, LLC to design, build, and operate a Mixed Oxide (MOX) Fuel Fabrication Facility (hereafter, the "MFFF") at DOE's Savannah River Site (SRS) in Aiken, South Carolina.

**Answer:** MOX denies the allegations contained in rhetorical paragraph eight of the Plaintiff's Complaint.

9. Plaintiff-Relator Peter Michael Wanco, Jr. is a former Quality Control Inspector for Defendants at the MFFF at the SRS. Mr. Wanco was hired by Orano in December 2016, and worked as an inspector until March 26, 2018, when he was forced to resign.

**Answer:** MOX admits that Mr. Wanco "is a former Quality Control Inspector for Defendants at the MFFF at the SRS." MOX further admits that "Mr. Wanco was hired by Orano in December 2016, and worked as an inspector until March 26, 2018" when, upon information and belief, he quit without explanation. MOX denies the remaining allegations contained in rhetorical paragraph nine of the Plaintiff's Complaint.

10. Defendant MOX Services, LLC is limited liability corporation whose members are non-defendant CB&I Project Services Group, LLC, which is organized under the laws of the state of Delaware and has its principal place of business in South Carolina, and Defendant Orano Federal Services, LLC. MOX Services was formerly known as CB&I AREVA MOX Services, LLC. At all times relevant to this action, MOX Services had contracted with NNSA to design, build, and operate the MFFF at SRS and did so through [sic] its partners, like Orano, and subcontractors.

**Answer:** MOX admits the allegations contained in rhetorical paragraph ten of the Plaintiff's Complaint.

11. Defendant Orano Federal Services, LLC (Orano) is a limited liability company organized under the laws of the State of Delaware with its principal place of business believed to be in Washington, D.C. Orano was previously known as "AREVA Federal Services." Orano claims to be a leading technology and services provider for decommissioned nuclear facilities and used nuclear fuel management. At all times relevant to this action, Orano was a key MOX Services partner with personnel working at the SRS.

**Answer:** MOX admits the allegations contained in rhetorical paragraph eleven of the Plaintiff's Complaint.

## **RELEVANT BACKGROUND**

### **The MOX Project.**

12. MOX Services is a NNSA contractor building the MFFF. The MFFF is designed to make MOX fuel – a blend of plutonium and uranium oxides.

**Answer:** MOX admits that it was formerly "a NNSA contractor building the MFFF" and further admits the allegations contained in rhetorical paragraph twelve of the Plaintiff's Complaint.

13. MOX fuel can be made by converting uranium and weapons-grade plutonium from decommissioned nuclear weapons and encasing it in fuel rods designed for use in nuclear power plants. After a 1994 study of National Academy of Sciences identified MOX fuel as a preferred method of disposal, in 1999, DOE initiated plans to design and construct a MOX manufacturing facility at SRS.

**Answer:** MOX admits the allegations contained in rhetorical paragraph thirteen of the Plaintiff's Complaint.

14. On March 22, 1999, NNSA awarded Contract No. DE-AC02-99CH10888 to MOX Services' predecessor in interest, Duke Cogema, Stone & Webster, LLC.

**Answer:** MOX admits the allegations contained in rhetorical paragraph fourteen of the Plaintiff's Complaint.

15. In 2000, the United States and the Russian Federation committed to each dispose of at least 34 metric tons of surplus plutonium and a 2010 protocol updated that agreement to specify that the plutonium be converted to MOX fuel.

**Answer:** MOX admits the allegations contained in rhetorical paragraph fifteen the Plaintiff's Complaint.

16. MOX Services is under contract with the NNSA to design, build, and operate the MFFF at SRS. Once complete, the facility is designed to transform 34 metric tons of weapons-grade plutonium into fuel for commercial reactors. DOE authorized construction to begin in 2007.

**Answer:** MOX admits that "MOX Services [was] under contract" and further admits the remaining allegations contained in rhetorical paragraph sixteen of the Plaintiff's Complaint.

17. Had it been completed, the MFFF would have been one of the largest and most complex fabrication facilities in the world and a main physical plan comprised of over 4.5 million cubic feet of concrete, 70 million pounds of reinforced steel. See CB&I AREVA MOX SERVS., LLC v. United States, 138 Fed. Cl. 292, 295 (2019).

**Answer:** MOX admits the allegations contained in rhetorical paragraph seventeen of the Plaintiff's Complaint.

18. The hundreds of process units and other equipment were to be installed in the plant before construction was complete, including many conveyors, lifts and sealed, and hardened glove boxes that were being fabricated by specialty manufacturers in the United States and around

the world and assembled at SRS. See Id. ”The controls and utilities that join the building to the equipment will require, among other utility delivery channels, over 80 miles of piping, nearly 1,300 miles of cabling, and over 1.3 million pounds of HVAC ducts.” Id.

**Answer:** MOX admits the allegations contained in rhetorical paragraph eighteen of the Plaintiff’s Complaint.

19. As such, the project requires a considerable number of welders, inspectors, and engineers to assemble the MFFF at SRS.

**Answer:** MOX admits the allegations contained in rhetorical paragraph nineteen of the Plaintiff’s Complaint.

20. “As a nuclear construction project where contractors will be working with weapons-grade plutonium and uranium oxide, the operation [at SRS] are governed by the regulations of the Nuclear Regulatory Commission.” Id.

**Answer:** MOX denies the allegations contained in rhetorical paragraph twenty of the Plaintiff’s Complaint.

21. “The cost and schedule of the MFFF has escalated dramatically. Originally, the estimated cost was less than \$4 billion, and the completion date was targeted for 2016.” Id. At 296. By 2018, the estimated cost ballooned at \$9.9 billion and the estimated completion date was delayed to 2029. Id.

**Answer:** MOX admits the allegations contained in rhetorical paragraph twenty-one of the Plaintiff’s Complaint.

22. In October 2018, the MFFF project was halted and federal contractors were told to shut down construction of the facility. See Brown, Andres, “Trump intervention the last hope for nuclear fuel facility at Savannah River Site,” THE POST AND COURIER (Oct. 18, 2018),

[https://www.postandcourier.com/business/trump-intervention-the-last-hope-for-nuclear-fuel-facility-at/article\\_854fa60e-d147-11e8-ba82-0fab49090a90.html](https://www.postandcourier.com/business/trump-intervention-the-last-hope-for-nuclear-fuel-facility-at/article_854fa60e-d147-11e8-ba82-0fab49090a90.html).

**Answer:** MOX admits that the MFFF project was halted by the United States in 2018. MOX denies the remaining allegations contained in rhetorical paragraph twenty-two of the Plaintiff's Complaint.

**Contract No. DE-AC02-99CG10888.**

23. Contract No. DE-AC02-99CG10888 consists of a base contract for the design of the MFFF and three options: Option 1 for construction of the MFFF (including fabrication and installation of process unit equipment and cold start-up); Option 2 is for operation of the MFFF; and Option 3 for deactivation of the MFFF. CB&I AREVA MOX Servs., 138 Fed. C1 at 295.

**Answer:** MOX admits the allegations contained in rhetorical paragraph twenty-three of the Plaintiff's Complaint.

24. NNSA awarded Option 1 to MOX Services on a cost reimbursement basis,<sup>1</sup> with MOX Services eligible to earn various fees or profits, including incentive fees. Id.

**Answer:** MOX admits the allegations contained in rhetorical paragraph twenty-four of the Plaintiff's Complaint.

**Federal Acquisition Regulation.**

25. Under the Federal Acquisition Regulation<sup>2</sup> (FAR), subpart 16.3, a cost-reimbursement contract provides for payment of allowable incurred costs, to the extent prescribed

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<sup>1</sup> The contract also includes the standard Federal Acquisition Regulation (FAR) clause, FAR 52.243-2 (2007), Changes (Cost Reimbursement). Id. This clause allows NNSA's contracting officer to make changes within the project scope and requires commensurate adjustments to the estimated costs and schedule, fee and other terms. The changes clause also applies to constructive changes without a formal change order.

<sup>2</sup> The FAR seeks, *inter alia*, to prevent the misuse of government funds by establishing uniform policies for appropriate acquisition and use of federal funds. The FAR applies to all DOE contractors and subcontractors in acquisitions of supplies and services which obligate appropriated funds unless otherwise specified. 48 C.F.R. § 901.104.



in the contract. 48 C.F.R. § 16.301-1. Notably, “[t]hese contracts establish an estimate of total cost for the purpose of obligating funds and establishing a ceiling that the contractor may not exceed (except at its own risk) without the approval of the contracting officer.” Id.; see also United States v. Savannah River Nuclear Sols., LLC, No. 1:16-cv-00825-JMC, 2016 WL 7104823, at \*1 (D.S.C. Dec. 6, 2016) (explaining a cost-reimbursement contract allowed reimbursement “for actual costs it incurred in furtherance of performing work under the contract – so long as those costs are allowable – and would earn a fee that represents its profits”).

**Answer:** MOX admits that the FAR regulations have provisions relating to whether certain costs are allowable. MOX denies the remaining allegations contained in rhetorical paragraph twenty-five of the Plaintiff’s Complaint.

26. Under the FAR, a contractor is allowed to charge to a government contract only those allocable costs that are allowable pursuant to Part 31 of the FAR and applicable agency supplements. 48 C.F.R. § 31.201-1(b).

**Answer:** MOX admits that the FAR regulations have provisions relating to whether certain costs are allowable. MOX denies the remaining allegations contained in rhetorical paragraph twenty-six of the Plaintiff’s Complaint.

27. Subpart 31.205 of the FAR provides that certain relocation costs are allowable provided they are “incident[al] to the permanent change of [an] assigned work location (for a period of 12 months or more) of an existing employee or upon recruitment of a new employee.” 48 C.F.R. § 31-205-35(a).

**Answer:** MOX admits that the FAR regulations have provisions relating to whether certain relocation costs are allowable. MOX denies the remaining allegations contained in rhetorical paragraph twenty-seven of the Plaintiff’s Complaint.

28. These relocation costs can be paid under a FAR contract, subject to the following requirements: (1) the move must be for the benefit of the employer; (2) reimbursements must be in accordance either with an established policy or with a practice that is consistently followed and designed to motivate employees to relocate promptly and economically; (3) the costs are not disallowed under subpart 31.2; (4) employee reimbursement may not exceed actual costs (except as expressly provided otherwise); (5) miscellaneous costs can be reimbursed in a lump-sum amount not to exceed \$5,000 in lieu of actual costs; and (6) costs related to finding a new home, traveling to a new location, and procuring temporary lodging can be reimbursed on a lump-sum basis” when adequately supported by data on the individual elements[.] 48 C.F.R. § 31.205-35(b).

**Answer:** MOX admits that the FAR regulations have provisions relating to whether certain relocation costs are allowable. MOX denies the remaining allegations contained in rhetorical paragraph twenty-eight of the Plaintiff’s Complaint.

29. Compliance with the FAR is a material condition of payment under the MFFF contract at SRS such that the knowing violation of these regulations to cause the payment of moneys by DOE or NNSA gives rise to a false claim.

**Answer:** MOX admits that the FAR regulations have provisions relating to whether certain relocation costs are allowable. MOX denies the remaining allegations contained in rhetorical paragraph twenty-nine of the Plaintiff’s Complaint.

**The False Claims Act.**

30. The False Claims Act (FCA) provides, in relevant part, that:

any person who--(A) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;

(B) knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim; [...]

\* \* \*

is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note; Public Law 104-4101), plus 3 times the amount of damages which the Government sustains because of the act of that person.

31 U.S.C. § 3729(a)(1).

**Answer:** MOX admits the allegations contained in rhetorical paragraph thirty of the Plaintiff's Complaint.

**FACTUAL ALLEGATIONS CONCERNING  
DEFENDANTS' FRAUDULENT CONDUCT**

31. Defendants provided relocation packages to employees who did not, in fact, relocate, in order to entice essential, skilled workers, like Mr. Wanco, to come work at SRS.

**Answer:** MOX denies the allegations contained in rhetorical paragraph thirty-one of the Plaintiff's Complaint.

32. On October 27, 2016, Mr. Wanco submitted an employment application for the position of Areva (now Orano) Federal Services Quality Specialist III (position No. DES02300), a welding and mechanical quality control inspector. That same day, he received a telephone call to set up an interview.

**Answer:** MOX admits the allegations contained in rhetorical paragraph thirty-two of the Plaintiff's Complaint.

33. At the time, he resided in Irmo and was working at the VC Summer Nuclear Generating Station in Fairfield County.

**Answer:** MOX admits the allegations contained in rhetorical paragraph thirty-three of the Plaintiff's Complaint.

34. On November 15, 2016, Mr. Wanco interviewed for the position. On November 28, 2016, he received an email offering him employment in exchange for a salary of \$95,000.

**Answer:** MOX denies the offer was for “a salary of \$95,000.” MOX admits that the offer was for a base salary of \$7,500.00 a month plus a \$5,000.00 signing bonus. MOX admits the remaining allegations contained in rhetorical paragraph thirty-four of the Plaintiff’s Complaint.

35. Mr. Wanco contacted Shakir Jones, an Areva recruiter, and told him he was looking for more money and, because he planned to commute from Irmo, a per diem.

**Answer:** MOX denies the allegations contained in rhetorical paragraph thirty-five of the Plaintiff’s Complaint.

36. On November 29, 2015, Jones stated he was unable to offer Mr. Wanco more money or a per diem, but he could offer a relocation package that would include a miscellaneous allowance, lump sum allotment, plus household goods shipment and reimbursement on final moving expenses.

**Answer:** MOX denies the allegations contained in rhetorical paragraph thirty-six of the Plaintiff’s Complaint.

37. Mr. Wanco explained that he did not intend to relocate his family from Irmo to the SRS area, but instead intended to commute or stay with a friend as needed.

**Answer:** MOX denies the allegations contained in rhetorical paragraph thirty-seven of the Plaintiff’s Complaint.

38. In response, Jones explained Mr. Wanco did not need to move and could “use the relocation package any way [he] like[d,]” because “[w]e don’t require proof or receipts on how you use the money. If you decide to rent a place, that would be fine.”

**Answer:** MOX denies the allegations contained in rhetorical paragraph thirty-eight of the Plaintiff's Complaint.

39. Mr. Wanco accepted shortly thereafter and began work on December 19, 2016. He received a relocation package of approximately \$21,000.

**Answer:** MOX admits the allegations contained in rhetorical paragraph thirty-nine of the Plaintiff's Complaint.

40. Mr. Wanco did not relocate, but commuted to SRS from his home in Irmo, South Carolina. Still, he received payment of the relocation package as promised.

**Answer:** MOX is without sufficient knowledge to either admit or deny the remaining allegations contained in rhetorical paragraph forty of the Plaintiff's Complaint.

41. When Mr. Wanco left his position over a year later. Defendant Orano demanded the return of the relocation money.

**Answer:** MOX admits that Mr. Wanco misled his employer about his intentions to move, as well as failed to remain employed for two years under his agreement, and thus was required to return those funds to MOX. MOX denies the allegations contained in rhetorical paragraph forty-one of the Plaintiff's Complaint.

42. Reimbursement for contract costs under FAR is dependent upon whether the costs were actually incurred, meaning actual relocation was necessary for Mr. Wanco to receive the relocation package he was offered and material to the government's decision to reimburse those purported costs.

**Answer:** MOX denies the allegations contained in rhetorical paragraph forty-two of Plaintiff's Complaint.

43. Thus, by recruiting and hiring necessary employees by offering relocation packages to individuals who did not intend to relocate, the Defendants violated the FAR and submitted (or caused to be submitted) false claims for reimbursement.

**Answer:** MOX denies the allegations contained in rhetorical paragraph forty-three of the Plaintiff's Complaint.

**FACTUAL ALLEGATIONS CONCERNING  
DEFENDANTS' RETALIATORY EMPLOYMENT CONDUCT**

**Nuclear Safety Regulations**

44. MFFF is regulated by the U.S. Nuclear Regulatory Commission (NRC) under 10 C.F.R. § 70, Domestic Licensing of Special Nuclear Material.

**Answer:** MOX admits the allegations contained in rhetorical paragraph forty-four of the Plaintiff's Complaint.

45. The construction and operation of a MFFF is considered a major federal action significantly affecting the quality of the human environment for the purposes of the National Environment Policy Act of 1969.

**Answer:** MOX admits the allegations contained in rhetorical paragraph forty-five of the Plaintiff's Complaint.

46. Construction of MFFF at SRS must be approved by the NRC based on the determination that the design bases of the principal structures, systems, and components and the quality assurance program provide reasonable assurance of protection against natural phenomena and the consequences of potential accidents. 10 C.F.R. § 70.23(b).

**Answer:** MOX admits the allegations contained in rhetorical paragraph forty-six of the Plaintiff's Complaint.

47. MOX Services is subject to 10 C.F.R. § 21, which requires reporting of noncompliance by any individual director or responsible officer who obtains information reasonably indicating a failure to comply with the Atomic Energy Act of 1954 or any applicable rule, regulation, order, or license of the NRC relating to substantial safety hazards. See 10 C.F.R. § 21.21 (concerning notification of NRC of failure to comply or existence of a defect).

**Answer:** MOX admits the allegations contained in rhetorical paragraph forty-seven of the Plaintiff's Complaint.

**Mr. Wanco's Safety Concerns and Defendants' Retaliatory Conduct**

48. Upon commencing work at SRS, Mr. Wanco soon came into conflict with supervisors over the sufficiency of inspection protocols essential to meet professional engineering standards and standards imposed by NRC regulation.

**Answer:** MOX is without sufficient knowledge to either admit or deny the allegations contained in rhetorical paragraph forty-eight of the Plaintiff's Complaint.

49. Section 10.2.1(f) of MOX Services' Quality Assurance Program (QAP) requires that documented inspection planning shall include sufficient information for the final inspection to provide a conclusion regarding conformance of the item to specified requirements.

**Answer:** MOX admits the allegations contained in rhetorical paragraph forty-nine of the Plaintiff's Complaint.

50. At any given time during the relevant time period, approximately 20 to 30 inspectors were working to review electrical, welding, civil, mechanical, and receipt at SRS.

**Answer:** MOX admits the allegations contained in rhetorical paragraph fifty of the Plaintiff's Complaint.

51. With respect to welding, MOX Services provides quality inspectors with inspection plans (IP's) to aid them in determining whether welds performed by Defendants' employees meet specifications and code. This QAP is required under the DOE/NNSA contract.

**Answer:** MOX admits the allegations contained in rhetorical paragraph fifty-one of the Plaintiff's Complaint.

52. At any given time during the relevant period approximately 50 to 75 welders are working and producing welds in need of inspection. On any given day, welders produce anywhere from five to 50 welds *per inspector* in need of inspection. Thus the IP's provide guidance to inspectors tasked with reviewing thousands of welds and miles of pipe in need of inspection during the life of the project.

**Answer:** MOX admits the allegations contained in rhetorical paragraph fifty-two of the Plaintiff's Complaint.

53. In December 2016, Mr. Wanco was hired as a welding quality inspector of pipe and structure.

**Answer:** MOX admits the allegations contained in rhetorical paragraph fifty-three of the Plaintiff's Complaint.

54. By September, 2017, Mr. Wanco's primary duty was revising and updating IP's for use by quality inspectors.

**Answer:** MOX admits the allegations contained in rhetorical paragraph fifty-four of the Plaintiff's Complaint.

55. In October 2016, Mr. Wanco attempted to revise a mechanical piping inspection plan No. M335-1 (hereafter, "M335-1"). The purpose of M335-1 was to ensure the system was



properly installed, welded, cleaned, and in good repair as the various components had already passed a weld inspection, but had not been installed.

**Answer:** MOX is without sufficient knowledge to either admit or deny the allegations contained in rhetorical paragraph fifty-five of the Plaintiff's Complaint.

56. Mr. Wanco attempted to revise M335-1 because he believed it provided insufficient information for inspectors to complete a thorough inspection and ensure the system met safety standards for the handling of dangerous, hazardous material.

**Answer:** MOX is without sufficient knowledge to either admit or deny the allegations contained in rhetorical paragraph fifty-six of the Plaintiff's Complaint.

57. On December 4, 2017, Mr. Wanco completed a revised IP, which was approved by one quality control supervisor, Marvin Neal.

**Answer:** MOX is without sufficient knowledge to either admit or deny the allegations contained in rhetorical paragraph fifty-seven of the Plaintiff's Complaint.

58. Andy Johnston, a Level 3 Special Projects and Quality Control Manager, raised concerns about the length of the 40+ page IP.

**Answer:** MOX is without sufficient knowledge to either admit or deny the allegations contained in rhetorical paragraph fifty-eight of the Plaintiff's Complaint.

59. Mr. Wanco revised the IP, shortened it to approximately 35 pages, and resubmitted it for Johnston's review.

**Answer:** MOX is without sufficient knowledge to either admit or deny the allegations contained in rhetorical paragraph fifty-nine of the Plaintiff's Complaint.

60. Johnston did not respond, but instead revised the IP himself down to just 16 pages.

**Answer:** MOX is without sufficient knowledge to either admit or deny the allegations contained in rhetorical paragraph sixty of the Plaintiff's Complaint.

61. Johnston's IP omitted a significant number of instructions and attachments designed to alert inspectors to critical engineering requirements.

**Answer:** MOX is without sufficient knowledge to either admit or deny the allegations contained in rhetorical paragraph sixty-one of the Plaintiff's Complaint.

62. Sometime in January 2018, Johnston's IP was approved for use in the field.

**Answer:** MOX is without sufficient knowledge to either admit or deny the allegations contained in rhetorical paragraph sixty-two of the Plaintiff's Complaint.

63. Shortly thereafter, a change to the project specification required an alteration to Johnston's IP.

**Answer:** MOX is without sufficient knowledge to either admit or deny the allegations contained in rhetorical paragraph sixty-three of the Plaintiff's Complaint.

64. Sometime during the week of March 12, 2018, Marvin Neal asked Mr. Wanco to review the IP. Mr. Wanco said he was unable to review the IP because it was not adequate to inform inspectors and he could therefore not sign his name to it.

**Answer:** MOX is without sufficient knowledge to either admit or deny the allegations contained in rhetorical paragraph sixty-four of the Plaintiff's Complaint.

65. On or about March 19, 2018, Kevin Carter approached Mr. Wanco about revising the IP. Mr. Wanco said he was unable to sign his name to the requested revisions without abandoning the truncated version approved by Johnston, but that, if Carter was willing to sign the IP, Mr. Wanco was willing to prepare the revisions as directed for Carter's signature. Carter said

he would speak to Andy Johnston, but that Mr. Wanco should be comfortable signing for it because he was not signing for the whole IP, just the changes.

**Answer:** MOX is without sufficient knowledge to either admit or deny the allegations contained in rhetorical paragraph sixty-five of the Plaintiff's Complaint.

66. At the end of that conversation, Carter warned that this would go "up the hill" soon and explained, "if you can't do this, we will have to get someone who can do this."

**Answer:** MOX denies the allegations contained in rhetorical paragraph sixty-six of the Plaintiff's Complaint.

67. That afternoon, Carter informed Mr. Wanco he was no longer needed to draft IPs and that he would be placed back in the field to obtain a certification for review of civil engineering work (e.g., anchor bolts installed in concrete).

**Answer:** MOX denies the allegations contained in rhetorical paragraph sixty-seven of the Plaintiff's Complaint.

68. This civil certification was a demotion from Mr. Wanco's area of expertise and would not benefit him professionally in any way.

**Answer:** MOX denies the allegations contained in rhetorical paragraph sixty-eight of the Plaintiff's Complaint.

69. Mr. Wanco took the remainder of the week off and resigned the following Monday.

**Answer:** MOX admits that, upon information and belief, Mr. Wanco called in sick Tuesday, Wednesday and Thursday of that week and quit on Monday, March 26, 2018. MOX denies the remaining allegations contained in rhetorical paragraph sixty-nine of the Plaintiff's Complaint.

70. Defendants created a hostile work environment by retaliating against Mr. Wanco for raising safety concerns about quality inspections.

**Answer:** MOX admits that in this Complaint Mr. Wanco claims he was “raising safety concerns about quality inspections”. MOX denies the remaining allegations contained in rhetorical paragraph seventy of the Plaintiff’s Complaint.

71. Refusing to engage in any practice made unlawful under the Atomic Energy Act or the Energy Reorganization Act is a protected action of an employee and is prohibited by the NRC. See 10 C.F.R. § 70.7(a)(1)(i)-(ii).

**Answer:** MOX admits that 10 C.F.R. § 70.7(a)(1)(i)-(ii) speaks for itself. MOX denies the remaining allegations contained in rhetorical paragraph seventy-one of the Plaintiff’s Complaint.

72. NRC places an especially high value on nuclear industry employees being free to raise potential safety concerns to both licensee management and the NRC, regardless of the merits of the concern, and recognizes that adverse employment actions against employees for raising safety concerns has a chilling effect on reports of safety concerns.

**Answer:** MOX admits that the NRC regulations speak for themselves. MOX denies the remaining allegations contained in rhetorical paragraph seventy-two of the Plaintiff’s Complaint.

73. The FCA provides for relief to employees who are discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee in furtherance of a false claims action. See 31 U.S.C. § 3730(h)(1).

**Answer:** MOX admits that 31 U.S.C. § 3730(h)(1) speaks for itself. MOX denies the remaining allegations contained in rhetorical paragraph seventy-three of the Plaintiff's Complaint.

74. Defendants retaliatory actions against Mr. Wanco, resulting in his constructive discharge from employment, violate NRC regulations, and entitle him to relief pursuant 31 U.S.C. § 3730(h).

**Answer:** MOX denies the allegations contained in rhetorical paragraph seventy-four of the Plaintiff's Complaint.

**FOR A FIRST CAUSE OF ACTION  
FCA VIOLATIONS OF 31 U.S.C. § 3729(a)(1)(A) & (B)  
(AGAINST ALL DEFENDANTS)**

75. Plaintiff-Relator re-alleges and incorporates by reference each of the allegations in the preceding paragraphs as though fully set forth herein.

**Answer:** MOX incorporates herein its answers to rhetorical Paragraphs 1 through 74 of the Plaintiff's Complaint as if fully set forth herein.

76. At all times relevant to this action, Defendants were required to comply with the terms of MFFF contract and the FAR concerning cost-reimbursement contracts.

**Answer:** MOX admits the allegations contained in rhetorical paragraph seventy-six of the Plaintiff's Complaint.

77. At all times relevant to this action, Defendants were also legally obligated to take corrective action upon discovering reimbursement of costs not allowable under the contract or federal law.

**Answer:** MOX admits the allegations contained in rhetorical paragraph seventy-seven of the Plaintiff's Complaint.

78. Instead, Defendants knowingly and willfully violated their obligations by using relocation packages to incentivize persons with necessary skills to accept employment at SRS when Defendants otherwise were unable to entice these workers to accept employment by offering the approved salaries for these positions.

**Answer:** MOX denies the allegations contained in rhetorical paragraph seventy-eight of the Plaintiff's Complaint.

79. Defendants conduct caused DOE and/or NNSA to reimburse costs in excess of the actual costs allowed to be reimbursed under the contract and FAR.

**Answer:** MOX denies the allegations contained in rhetorical paragraph seventy-nine of the Plaintiff's Complaint.

80. Had DOE and/or NNRA known Defendants were fraudulently offering relocation packages to persons with no intention of relocating, DOE/NNSA would not have reimbursed these costs or would have demanded repayment of the monies or an adjustment of some future reimbursement.

**Answer:** MOX denies the allegations contained in rhetorical paragraph eighty of the Plaintiff's Complaint.

81. Defendants' conduct is a violation of 31 U.S.C. § 3729(a)(1)(A) & (B), as amended.

**Answer:** MOX denies the allegations contained in rhetorical paragraph eighty-one of the Plaintiff's Complaint.

**FOR A SECOND CAUSE OF ACTION  
FCA VIOLATION OF 31 U.S.C. § 3729(h)  
(AGAINST ALL DEFENDANTS)**

82. Plaintiff-Relator re-alleges and incorporates by reference each of the allegations in the preceding paragraphs as though fully set for [sic] herein.

**Answer:** MOX incorporates herein its answers to rhetorical Paragraphs 1 through 81 of the Plaintiff's Complaint as if fully set forth herein.

83. Plaintiff-Relator sought to ensure inspectors at MFFF applied appropriate criteria when reviewing project specifications for compliance with professional standards, NRC regulations, and the MFFF contract.

**Answer:** MOX denies the allegations contained in rhetorical paragraph eighty-three of the Plaintiff's Complaint.

84. When Plaintiff-Relator's supervisors objected to his proposed IPs and overruled him by implementing an inadequate protocol.

**Answer:** MOX denies the allegations contained in rhetorical paragraph eighty-four of the Plaintiff's Complaint.

85. Thereafter, they insisted he sign his name to an IP revision Plaintiff-Relator knew to be deficient. When he raised the issue, he was told he should sign off on the document anyway or someone else would.

**Answer:** MOX denies the allegations contained in rhetorical paragraph eighty-five of the Plaintiff's Complaint.

86. Shortly after that, Plaintiff-Relator was demoted by being reassigned to a civil engineering position – an area outside and below his expertise.

**Answer:** MOX denies the allegations contained in rhetorical paragraph eighty-six of the Plaintiff's Complaint.

87. This demotion was a constructive termination from the position he was promoted to fill at the time this dispute arose.

**Answer:** MOX denies the allegations contained in rhetorical paragraph eighty-seven of the Plaintiff's Complaint.

88. As a result of this retaliatory conduct, Plaintiff-Relator lost income he would have otherwise earned.

**Answer:** MOX denies the allegations contained in rhetorical paragraph eighty-eight of the Plaintiff's Complaint.

89. Defendants' conduct is a violation of 31 U.S.C. § 3730(h), as amended.

**Answer:** MOX denies the allegations contained in rhetorical paragraph eighty-nine of the Plaintiff's Complaint.

#### **AFFIRMATIVE DEFENSES**

1. MOX denies the allegations in the Complaint that are not specifically admitted above.

2. The False Claims Act ("FCA") claims in Counts I & II of the Complaint fail to state a claim for which relief can be granted on the grounds that the Plaintiff has failed to meet his burden to plead fraud with the particularity required under Rule 9(b).

3. The FCA claims in Counts I & II of the Complaint fail to state a claim for which relief can be granted on the grounds that the Plaintiff has failed to plead sufficient facts to support the elements of its claims under 31 U.S.C.A. § 3729(a)(1), including, but not limited to the "scienter" or knowledge element.



4. The FCA claims in Counts I & II of the Complaint fail to state a claim for which relief can be granted to the extent that they that are barred by the applicable statute of limitations, including 31 U.S.C. § 3731(b).

5. The FCA claims in Counts I & II of the Complaint are barred, in whole or part, by the government knowledge inference defense which defeats the *scienter* requirement under the FCA.

6. The Retaliation claims in Count II of the Complaint fail to state a claim for which relief can be granted on the grounds outlined in the Motion for Judgment on the Pleadings filed contemporaneously herewith.

7. To the extent that Plaintiffs' claims are barred by the statute of limitations, doctrine of laches, waiver, estoppel, justification, fraud, and/or Plaintiffs' own actions, inactions, or omissions, such doctrines are pled as defenses to Plaintiffs' action.

8. The Plaintiff's claims are barred, in whole or in part, by his own fraudulent conduct, and he has unjustly enriched himself through this fraudulent conduct.

9. MOX reserves the right to assert additional affirmative defenses as discovery continues.

10. MOX is continuing its investigation and study of all facts and circumstances of the subject matter of the Complaint, and accordingly, reserves the right to amend, modify, revise or supplement its Answer, and to plead such further defenses and take such further actions as it may deem proper and necessary in their defense upon the completion of such investigation and study.

WHEREFORE, the Defendants, MOX Services, LLC and Orano Federal Services LLC, pray that the Court find in favor of the Defendants and that the Plaintiff take nothing by way of his Complaint, and for all other just and appropriate relief in the premises.

Respectfully submitted,

/s/Noah M. Hicks II

Noah M. Hicks II, Fed Id No. 9743

Attorneys for Defendants

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on 12 February 2020, a copy of the foregoing was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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