UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CONVERDYN, Plaintiff, v. ERNEST J. MONIZ and UNITED STATES DEPARTMENT OF ENERGY, Defendants.	)	No. 1:14-cv-1012 RBW

DEFENDANTS' REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

INTRODUCTION

Plaintiff's Opposition to Defendants' Motion for Summary Judgment ("Opposition") invites the Court to overturn the Secretary of Energy's ("DOE" or "Secretary") judgment that the transfer of uranium—at slightly lower levels than were authorized for the two preceding years—will not have an "adverse material impact" on the domestic uranium industry. That decision was informed by a thoroughly documented report by the Secretary's consultant, Energy Resources International ("ERI"), and a separate analysis by DOE's Office of Nuclear Energy ("NE"). There is no justification for the Court to substitute its judgment for the Secretary's on this issue. As the balance of plaintiff's arguments are equally meritless, the Court should enter Summary Judgment for the Secretary.

ARGUMENT

I. The Secretary's determination that the planned uranium transfers will not have an "adverse material impact" on the domestic uranium industry is rational and supported by the administrative record.

A. The Secretary Adequately Addressed the Relevant Factors

Contrary to plaintiff's implication, DOE's Motion for Summary Judgment ("Def. Motion") comprehensively explained, with citations to the record, the two-step process the agency utilized to reach the determination regarding the uranium transfers. First, DOE accepted ERI's conclusions about the market effects of DOE's annual transfers in the range of 2,700 - 2,800 metric tons of uranium ("MTU") in recent years — effects that would continue, without notable decrease or increase, if transfers in this range continued. DOE_0406-10. DOE then applied its expertise and concluded that the market impacts from transfers in this range – such as a continued negative price pressure worth 6% of term conversion prices -- would not constitute an "adverse material impact" on domestic uranium industries, 42 U.S.C. § 2297h-10(d)(2)(B), *i.e.* an impact "of real importance or great consequence." *Holder v. Humanitarian Law Project*, 561 U.S. 1, 57-58 (2010). *See* DOE_0416 (concluding no adverse material impact "due to the limited ability of the relatively small amount of material and services being displaced to significantly influence the domestic uranium, mining, conversion, and enrichment industries").

While plaintiff might wish DOE had understood "material" as simply a measure of industry profits, DOE's conclusion that the modest market impacts identified by ERI were not "material" is a reasonable one, and certainly is not arbitrary or capricious.

Plaintiff's argument that in approving the transfers, DOE compared "the benefits of transfers *to the government* against the adverse impact *to the domestic uranium*

industry," Opposition at 4 (emphasis in original), is clearly wrong. Defendants' Motion pointed out that plaintiff had failed to support this assertion with any citation to the Administrative Record, Def. Motion at 27-28. Plaintiff now attempts to address this total lack of evidence in support of one of its central allegations with a misrepresentation of a key document in the Administrative Record. Plaintiff relies on the following quote from DOE's May 12, 2014 Memo: "[t]he change in the programs' proposed quantities arises from the requirement in the NNSA down-blending contract that NNSA transfer LEU equivalent to the invoiced monetary value for services, which results in higher quantities *needing* to be delivered to meet the same monetary values in a depressed market." Opposition at 4-5, *quoting* DOE_0399 (emphasis added by plaintiff). This selective quotation completely misrepresents what DOE intended and what actually occurred.

First, read in its context, the sentence plaintiff quoted was the memo's explanation that while "the overall NU equivalent volume proposed to be transferred . . . is actually *lower* than that contained in the 2012 Determination," DOE_0399 (emphasis added), the transfers would be shifting somewhat from one program to another. DOE proposed to *increase* transfers to support NNSA's down-blending program (from 400 to 650 MTU), but the memo balanced that against a *decrease* in annual transfers to support DOE's Portsmouth environmental clean-up program (from 2,400 MTU to 2,055 MTU)—for a net decrease compared to past transfers. DOE_0399.

Finally, a key goal for DOE in approving the transfers was to maintain the *predictability* of its transfer policy, to allow all components of the nuclear industry to develop long term plans based on reliable assumptions about the amount of uranium that DOE will transfer each year. As the May 12, 2014 Memo noted, "[a]ll industry

participants note the importance of DOE predictability in supporting more stable markets and a strong domestic industry." DOE_0399. ERI also reinforced this point. DOE_0198 ("the predictability of DOE's inventory transfers into the commercial market over time is very important to the orderly functioning of the nuclear fuel market").

B. DOE properly concluded that the 2014 ERI Report adequately addressed ConverDyn's alleged losses.

DOE had the benefit of two analyses of potential harm to the domestic conversion industry – that of ERI and the review of ERI's work by DOE's Office of Nuclear Energy – each of which fully addressed the scope and nature of the adverse impact on ConverDyn from the proposed uranium transfers. ERI presented a comprehensive, ten page analysis of the potential effects of the transfers in conversion markets, DOE_0262-272, which concluded that DOE transfers in the range of 2,700-2,800 MTU annually would continue to contribute downward pressure—of about the same magnitude as DOE's 2012-2013 transfers—on prices and sales of conversion services. *See e.g.* DOE_0271 ("Sales volume impacts to ConverDyn due to the introduction of DOE inventory result in a sales volume reduction of 7% to 8% . . ."). NE's memorandum summarized and incorporated ERI's conclusions in formulating an independent analysis for the Secretary. DOE_0416.

ConverDyn complains that DOE did not address the information it submitted to DOE in its March 10, 2014 letter. Notably, ConverDyn did not provide DOE, or ERI, with complete, fully-supported information documenting its alleged losses. Instead, it offered conclusory assertions that it asserts are based on "conservative assumptions," Opposition at 7, about its sales. Under these circumstances, it was not unreasonable for

DOE to rely on ERI's knowledge of the industry and ERI's calculation of the effects of the proposed transfers in the conversion market in making the determination of no adverse material impact.

Moreover, plaintiff admits that it has lost money for the last *ten years*, Opposition at 6, yet DOE did not begin uranium transfers in the 2,700-2,800 MTU range until the 2012 Determination. Therefore, it was entirely reasonable for DOE to conclude that there were many more factors affecting the profitability of ConverDyn than DOE's uranium transfers – notably ConverDyn's labor disputes and regulatory problems. *See* Defendants' Opposition to Motion for Preliminary Injunction (Dkt. 17) at 38.

Finally, nothing in DOE's briefs constitutes a prohibited *post hoc* rationalization for the Secretary's decision. The information and reasoning governing the Secretary's decision are fully set forth in the May 12, 2014 Memorandum for the Secretary, DOE_0397-404, and the NE analysis, DOE_0405-19, which cites to the ERI report, DOE_0181-286. DOE's briefs in this litigation merely have objected to plaintiff's description of the administrative record and offered a more accurate understanding of the basis for the Secretary's decision, with appropriate citations to the administrative record. This Court can "uphold a decision of less than ideal clarity if the agency's path may reasonably be discerned." *Bowman Transp. Inc. v. Arkansas-Best Freight System*, 419 U.S. 281, 286 (1974).

C. The ERI Report, which informed DOE's decisions, separately analyzed the effect of the transfers in the conversion market.

The Secretary's May 15, 2014 Determination found that the proposed transfers of 2,705 MTU of uranium annually would not have an adverse material impact on either the

mining, conversion or enrichment components of the domestic uranium industry. While the Secretary did not issue three separate determinations for the three uranium industry components, the Secretary's decision was supported by ERI's careful analysis of each segment of the domestic uranium industry as well as by the subsequent review and analysis of ERI's study by the Office of Nuclear Energy.

ERI concluded that DOE's proposed annual transfers of 2,705 MTU would have about the same effect in the uranium conversion market as had the 2012 and 2013 transfers of 2,800 MTU – tending to reduce sales by 7% to 8% and term prices by 6% compared to what would have been the case without any DOE transfers. DOE_0271. Similarly, NE concluded that "[t]he loss of sales volume associated with []the entry of DOE material in the conversion market . . . results in a production cost increase of 6% to 8%." DOE_0409. Obviously, all three components of the domestic uranium industry are affected by global demand factors, such as the sharp reduction in demand after Fukushima, as ERI concluded. *See* DOE_0203-05 (uranium); DOE_0210-12 (conversion); DOE_0215-17 (enrichment).

These detailed analyses of the projected impacts of the DOE transfers on the domestic conversion industry, which informed the Secretary's Determination, demonstrate that DOE "examine[d] the relevant data and articulate[d] a satisfactory explanation for its action," *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Ins. Co.*, 463 U.S. 29, 43 (1983), in finding no adverse material impact on the domestic uranium conversion industry.

D. DOE properly considered the global and interrelated nature of uranium markets.

Plaintiff criticizes DOE for taking account of global markets, such as by noting that the DOE transfers constitute only 4.5% of global uranium demand. Opposition at 11. But domestic firms are actors in a global marketplace, and DOE's analysis must reflect that economic reality. Hence, it is reasonable, in fact essential, for DOE to account for the interrelated, global nature of uranium markets when evaluating the impacts of its transfers on the components of the domestic uranium industry. Indeed, in discussing DOE's authority to transfer conversion, plaintiff's Opposition recognizes the global nature of the market in suggesting the hypothetical of foreign customers of domestic uranium suppliers electing to convert uranium to UF6 at facilities outside of the United States. Opposition at 15-16.

It is certainly true, as plaintiff asserts, that "[s]mall acts can have large consequences," Opposition at 11. But it is equally true that small acts can have modest consequences – such as the 6% decline in term conversion prices attributed to DOE's transfers – that do not rise to the level "of real importance or great consequence." *Humanitarian Law Project*, 561 U.S. at 57-58.

II. The Secretary has authority to transfer the uranium compound UF6.

Plaintiff relies on a tortured reading of the Privatization Act and the Atomic Energy Act ("AEA") to argue that DOE does not have the authority to transfer UF6 because it contains conversion services. Opposition at 13-15. Plaintiff's reading is incorrect for several reasons.

First, plaintiff's description of 42 U.S.C. § 2297h-10 inaccurately paraphrases that section in a manner that misrepresents its meaning. Plaintiff's Opposition describes section 2297h-10(a) as follows:

> The Privatization Act expressly states that the Secretary "shall not . . . transfer or sell any uranium (including natural uranium concentrates, natural uranium hexafluoride [(UF6)], or enriched uranium in any form) to any person" *except as provided for in certain exceptions*.

Opposition at 13 (emphasis added). With this paraphrase, plaintiff argues that section 2297h-10 consists of a blanket prohibition on all sales of uranium, subject to certain exceptions to that prohibition. The actual language of section 2297h-10(a) reads that the Secretary "shall not . . . transfer or sell any uranium (including natural uranium concentrates, natural uranium hexafluoride, or enriched uranium in any form) to any person except *as consistent with this section*." (emphasis added). The words "consistent with" indicate that section 2297h-10 merely adds conditions overlaying DOE's preexisting authority to transfer uranium. *Cf. Envt'l Defense Fund v. EPA*, 82 F.3d 451, 457 (D.C. Cir. 1996) (noting that petitioners had "construe[d] the phrase 'consistent with' too narrowly"; "consistent with" connotes "congruity or compatibility," not "strict compliance"). Thus, section 2297h-10 does not impose a blanket prohibition on all transfers other than those specifically mentioned in the section.

As DOE has stated on numerous occasions,[1] the authority to transfer uranium comes from the Atomic Energy Act, ("AEA"). The AEA authorizes DOE to transfer all types and forms of nuclear material, defined as "source material," 42 U.S.C. § 2093(a),

[1] *See, e.g.*, DOE_0405; Secretary of Energy's Policy Stmt. on Management of the Dep't of Energy's Excess Uranium Inventory, p.1 (Mar. 11, 2008) (attached as Exh. _ to Plaintiff's Motion for Preliminary Injunction); Dep't of Energy, "GC Guidance on Barter Transactions Involving DOE-Owned Uranium," pp. 2-3 (June 16, 2010), available at http://www.energy.gov/sites/prod/files/gcprod/documents/UraniumBarterGuidance.pdf.

"special nuclear material," 42 U.S.C. § 2073(a), and "byproduct material," 42 U.S.C. § 2111. Nothing in the Privatization Act purports to amend or repeal DOE's AEA authorities with respect to the sale or transfer of uranium. Furthermore, there is nothing incompatible between the preexisting AEA authority and the overlay of additional conditions contained in the Privatization Act. *See Morton v. Mancari*, 417 U.S. 535, 550 (1974) ("In the absence of some affirmative showing of an intention to repeal, the only permissible justification for a repeal by implication is when the earlier and later statutes are irreconcilable.").

Second, plaintiff is simply incorrect in its assertion that section 2297h-10(d) prohibits DOE from transferring uranium hexafluoride. Plaintiff erroneously claims that because section 2297h-10 uses various modifiers to identify categories of uranium in the nuclear fuel cycle, the phrase "natural and low enriched uranium" as used in section 2297 h-10(d) does not encompass uranium hexafluoride. Opposition at 14. But, as ordinarily understood in the nuclear industry, the terms "natural" and "low enriched" refer to natural and the low-enriched isotopic compositions of uranium—regardless of the chemical form of the uranium.[2] Uranium comes in various chemical forms, *e.g.* triuranium octaoxide (U3O8, the common form of which is known as "yellowcake," produced during the uranium mining and milling process), uranium hexafluoride (UF6, a chemical form of uranium used in the uranium enrichment process), or other compounds containing

[2] *See, e.g.*, Walter D. Loveland, David J. Morrissey, and Glenn T. Seaborg, "Modern Nuclear Chemistry," p.477 (10th ed. 2006) ("natural uranium" used to mean UF6 gas introduced into a gaseous diffusion plant); *Amendment to the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation*, 59 Fed. Reg. 15,373, 15,374 (Apr. 1, 1994) (references to trading of "natural uranium (i.e. U_3O_8 or UF_6)"; emphasis added); "Natural Uranium," *U.S. Nuclear Regulatory Commission*, http://www.nrc.gov/reading-rm/basic-ref/glossary/natural-uranium.html (last visited October 20, 2014) (defining "natural uranium" with respect to its isotopic ratio without any reference to chemical form).

uranium such as uranium dioxide (UO2, commonly used in reactor fuel). It also comes with various concentrations of the different isotopes of uranium. For example, a quantity of uranium in *any* chemical form is called "natural" if the relative concentration of U-235 is 0.711%; it is "low-enriched" if the relative concentration of U-235 has been enriched above 0.711% but less than 20%. "[W]here Congress has used technical words or terms of art, 'it (is) proper to explain them by reference to the art or science to which they (are) appropriate.'" *Corning Glass Works v. Brennan*, 417 U.S. 188, 201 (1974). Thus, "natural uranium" is most appropriately understood in terms of its isotopic composition, not its chemical form. Plaintiff's assertion that natural uranium cannot mean UF6 is simply incorrect.[3]

Furthermore, plaintiff's alternative reading would produce absurd results. Plaintiff appears to think that because section 2297h-10 sometimes mentions particular chemical forms of uranium, every mention of uranium in the section must identify categories of uranium both with respect to chemical form and isotopic composition. Section 2297h-10(d) does not mention any particular chemical compound of uranium; so it would follow from plaintiff's argument that "natural uranium" must be uranium in its elemental form, i.e. metallic uranium. But, elemental uranium never appears in the nuclear fuel cycle, so this reading would render section 2297h-10(d) nugatory.

Third, plaintiff concedes that DOE can transfer the "natural and low enriched uranium" in UF6. Opposition at 15 n.11. This concession should end the issue. Plaintiff

[3] Plaintiff also calls DOE's AEA authorities into question on the same basis. Opposition at 14 n.10. Plaintiff doubts whether natural UF6 and low-enriched UF6 are "source" and "special nuclear material," respectively. *Id.* Yet if they were not, then the AEA largely would not regulate commerce in UF6—a startling gap for such a highly sensitive substance that represents a key step in the nuclear fuel cycle.

asserts that, in transferring UF6, DOE must not sell the "conversion component" of the material. But to retain the "conversion component" DOE would need to buy back credits for conversion services to offset the amount of UF6 it transfers. Section 2297h-10(d) does not mention, much less require, such ancillary transactions. The "uranium" the provision refers to is indisputably a physical substance, and the "transfer" or "sale" the provision describes is a transfer or sale of that substance. To be sure, a market exists for conversion services tradable as a commodity on their own. But it would be a strained usage of words for a "transfer" of "uranium" to mean, whenever the uranium is in UF6, a transfer of the uranium plus a purchase of conversion services.[4]

Plaintiff also attempts to draw support for its argument by stating that section 2297h-10(b) "expressly allows" sales of conversion for material from the US-Russia HEU Agreement, while section 2297h-10(d) does not contain such a clause. Opposition at 16. However, far from specifically granting authority to sell conversion services, section 2297h-10(b)(8) states, "nothing in this subsection (b) shall *restrict* the sale of the conversion component of such uranium hexafluoride." 42 U.S.C. § 2297h-10(b)(8) (emphasis added); *see also* § 2297h-10(b)(4). Thus, the language of 2297h-10(b) merely provides that quantity limits on the sale of Russian uranium hexafluoride under subsections (b)(3) and (4) do not apply to transactions in which the seller exchanges UF6 for natural uranium concentrates (U308) and cash equivalent to the conversion component.[5]

[4] Plaintiff observes that a separate market for conversion services exists; but it does not argue, and it provides no evidence, that industry participants assume a sale of "uranium" includes a buyback of offsetting conversion.

[5] The term "natural uranium component" is distinct from the term "natural uranium." The "natural uranium component" of a given quantity of HEU refers to the amount of natural uranium concentrate that

III. DOE receives Fair Market Value for its uranium transfers.

A. Plaintiff lacks standing to challenge DOE's compliance with the Fair Market Value requirement of 42 U.S.C. 2297h-10(d)(2)(C).

The interests of domestic uranium industries in connection with transfers of uranium under the Privatization Act are expressly protected by section 2297h-10(d)(2)(B), which prohibits transfers having an "adverse material impact" on those industries. *Id.* That explicit protection undercuts any argument that the "fair market value" requirement of section 2297h-10(d)(2)(C) is also designed to protect domestic industries. While statutes can have multiple purposes as plaintiff suggests, Opposition at 18, where, as here, Congress has explicitly protected certain private interests through one statutory provision, a different provision such as the fair market value requirement should not be construed to also protect those interests. This is especially true where the most natural reading is that it is solely designed to protect the value of government property.

B. DOE will receive Fair Market Value for its uranium transfers.

The Privatization Act requires two separate determinations before uranium can be transferred: one by the President that the uranium is not needed for national security, 42 U.S.C. 2297h-10(d)(2)(A) and one by the Secretary of Energy that any transfers will not have an "adverse material impact" on domestic uranium industries, 42 U.S.C. 2297h-10(d)(2)(C). But no executive branch official need make any "determination" as to fair market value, instead it is simply a requirement, similar to many others in the United

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would be needed in order to produce the quantity of HEU. This term is useful in determining how much primary natural uranium concentrate production is offset by downblending a given amount of HEU.

States Code, that the federal government receive fair market value for government property transferred or sold.[6]

There is no dispute between the parties that the services DOE receives in exchange for the uranium transferred are calculated through negotiations between DOE and its contractors based on spot market prices.[7] The specific value assigned to any particular periodic transfer is the product of an arms' length transaction between a "willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts." *United States v. Cartwright,* 411 U.S. 546, 551 (1973), *quoted in* Opposition at 20-21. That alone is sufficient to conclude that DOE received fair market value. Alternatively, if the reasonableness of the prices DOE receives should be judged by some sort of multi-factor test as plaintiff appears to suggest, Opposition at 21, receiving something close to the spot market price surely satisfies any such standard.[8]

[6] The absence of any requirement for an agency determination, of the sort presumptively subject to review under the Administrative Procedure Act, is consistent with the argument that no party has standing to challenge a provision designed solely to protect the value of government property.

[7] The value received by DOE in EM's contract with FBP reflects a slight discount below the spot price, *see* plaintiff's Exhibit 14 (September 20, 2014 letter to Congress), to reflect the fact that FBP is not in the business of buying or selling uranium and hence must incur transaction costs to sell the uranium it receives. Owendoff Declaration, Attachment 2 to Opposition to Motion for Preliminary Injunction, ¶¶ 3; 11-12. NNSA by contrast does not provide such a discount since its contractor WesDyne, is in the business of selling uranium. Hanlon Declaration, Attachment 3 to Opposition to Motion for Preliminary Injunction, ¶¶ 14; 18.

[8] Plaintiff also argues that DOE's 2008 Policy Statement "show[s] that [DOE] only receives 'reasonable value,' not 'fair market value,' for its transfers." Opposition at 20. This argument incorrectly interprets the 2008 Policy Statement and its application. Under the AEA, DOE is required to obtain "reasonable compensation" for transfers of source and special nuclear material. 42 U.S.C. §§ 2073(c)(2); 2201(m). The 2008 Policy Statement addressed the AEA obligation. Section 2297h-10(d) additionally requires DOE to get "fair market value" in the case of transfers covered by that section. Fair market value would ordinarily be reasonable compensation, so for transfers subject to section 2297h-10(d) DOE simply conducts a fair market value analysis to ensure compliance with both statutes.

Notwithstanding these facts, plaintiff asks this Court to enjoin DOE's Determination solely because it is receiving spot rather than term prices – effectively compelling DOE to enter into term contracts as a requirement to continue uranium transfers. Nothing in the Privatization Act or any other law compels this result.

IV. DOE's Excess Uranium Inventory Management Plan is lawful.

A. DOE was not required to conduct rulemaking proceedings to modify the Plan.

Plaintiff's contention that DOE's 2008 Excess Uranium Management Plan could not be modified by the agency in 2013 without conducting rulemaking proceedings is simply mistaken. The 2008 Plan was adopted without rulemaking proceedings, is expressly denominated as a "Policy Statement" and repeatedly qualified its statements with the word "general" or "generally." *See,* Def. Motion at 35. As a policy statement it did not impose binding legislative norms or obligations as would a legislative rule, and hence can be changed without the need to conduct rulemaking proceedings.

Plaintiff relies on three decisions, all of which describe legislative rules as those which, *inter alia,* "effect a change in existing law or policy." *American Tort Reform Ass'n v. OSHA*, 738 F.3d 387, 395 (D.C. Cir. 2013, *quoting, Alcaraz v. Block*, 746 F.2d 593, 613 (9th Cir. 1984). *See also Mendoza v. Perez,* 754 F.3d 1002, 1021 (D.C. Cir. 2014); *Nat'l family Plan. & Reproductive Health Ass'n*, 979 F.2d 227, 237 (D.C. Cir. 1992). But these cases only described the distinction between two types of binding rules: interpretive rules, which explain existing laws and policies, and legislative rules, which change law or policy. *See, e.g.*, *Mendoza*, 754 F.3d at 1021 (describing "court's inquiry in distinguishing legislative from interpretative rules"). None of these cases purported to

abrogate the well-established "distinction between 'general statements of policy' and 'rules,'" *Ctr. for Auto Safety v. NHTSA*, 452 F.3d 798, 807 (D.C. Cir. 2006). A non-binding "general statement of policy" is exempt from the APA's notice-and-comment requirement, *id.*, even though of course it changes existing policy. Both the 2008 and the 2013 version of DOE's uranium management plan were of that order.

B. DOE's Excess Uranium Inventory Management Plan is reasonable.

In removing the 10 percent of domestic requirements guideline on uranium transfers in 2013, DOE explained that it was relying on its experience with transfers over the prior several years (informed by several ERI reports) which led it to conclude that an established guideline on transfer volume was no longer necessary. DOE_0061. Plaintiff's only rebuttal is that ERI reported that representatives of the domestic uranium industry would object to withdrawing the 10 percent guideline.[9] Opposition at 26. But the objection of these obviously self-interested parties can hardly be a dispositive factor, freezing the guideline into place indefinitely.

Moreover, plaintiff's assertion that, with the withdrawal of the 10 percent guideline, DOE is "endowing itself with unfettered discretion," Opposition at 27, ignores the fact that any transfer of uranium must be made pursuant to a Secretarial Determination under 42 U.S.C. 2297h-10(d)(2)(B), after careful analysis and subject to judicial review.

[9] Plaintiff asserts that "the ERI Reports make clear that this is not just the opinion of industry participants but also of ERI itself." Opposition at 27. But the quoted portion of the 2009 ERI report makes clear that ERI is not issuing a firm opinion, endorsing industry concern, but is only *reporting* industry concern.

CONCLUSION

Wherefore, defendants' Motion for Summary Judgment should be granted.

October 21, 2014

Respectfully submitted,

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Certificate of Service

I hereby certify that on the 2ist day of October, 2014, I caused the forgoing Defendants' Reply Memorandum in Support of Motion for Summary Judgment to be served on counsel for plaintiff by filing with the Court's electronic case filing system.

/s/ Daniel Bensing

Daniel Bensing