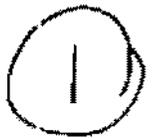




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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**UNITED STATES OF AMERICA, ex. rel.,  
VINCENT A. DIMEZZA Jr.,**

**Plaintiff**

v.

**THE BOEING COMPANY**

**Defendant**

: Civil Action No.

**10 - 634**

: FILED UNDER SEAL

**FILED**

FEB 16 2010

: **JURY TRIAL DEMANDED**

MICHAEL E. KUNZ, Clerk  
By: [Signature] Dep. Clerk

**COMPLAINT FOR VIOLATIONS OF FEDERAL FALSE CLAIMS ACT**

Qui tam Plaintiff/Relator Vincent A. DiMezza, Jr., brings this civil action against The Boeing Company on behalf of the United States of America and himself and alleges as follows:

**I. INTRODUCTION**

1. This is an action to recover damages and civil penalties on behalf of the United States of America arising from false and/or fraudulent records, statements and claims made, used and caused to be made, used or presented by Defendant, The Boeing Company ("Boeing"), and/or their agents and employees in violation of the Civil False Claims Act ("FCA"), 31 U.S.C. § 3729, et seq.

2. Boeing has engaged in a pattern and practice of intentionally submitting false and fraudulent claims for modification work performed under a government contract with the United States Department of Defense (the "DOD"), to produce, maintain, repair and/or modify the Chinook CH-47D and MH-47 helicopters ("Chinook helicopters," "the helicopters," or the "aircraft").

3. As a direct result of Defendant's improper practices, the DOD has paid false claims for modification work performed on the Chinook helicopters.

4. The FCA was originally enacted during the Civil War and was substantially amended in 1986. Congress amended the Act to enhance the Government's ability to recover losses sustained as a result of fraud against the United States after finding that fraud in federal programs was pervasive and that the Act, which Congress characterized as the primary tool for combating government fraud, was in need of modernization. Congress intended that the amendments create incentives for individuals with knowledge of fraud against the government to disclose the information without fear of reprisals or Government inaction, and to encourage the private bar to commit legal resources to prosecuting fraud on the Government's behalf.

5. The Act provides that any person who knowingly submits, or causes the submission of, a false or fraudulent claim to the United States Government for payment or approval is liable for a civil penalty of up to \$11,000.00 for each claim, plus three times the amount of the damages sustained by the Government.

6. The Act allows any person having information about a false or fraudulent claim against the Government to bring an action for himself and the Government, and to share in a recovery. The Act requires that the complaint be filed under seal for a minimum of sixty (60) days (without service on the defendant during that time) to allow the Government time to conduct its own investigation and to determine whether to join in the suit.

7. Based upon these provisions, Plaintiff/Relator seeks through this action to recover on behalf of the United States, damages and civil penalties arising from Defendant's making or causing to be made false or fraudulent records, statements and/or claims in connection with the

submission of claims for reimbursement for modification work performed on the Chinook helicopters.

## II. PARTIES

### A. Relator Vincent A. DiMezza, Jr.

8. Plaintiff/Relator, Vincent A. DiMezza, Jr. is a resident of the State of New Jersey and a citizen of the United States, residing at 814 N. Read Avenue, Runnemede, New Jersey 08078.

9. Plaintiff/Relator, who is 35 years old, served as a Sergeant in the United States Marine Corps from 1997 to 2002.

10. In the United States Marine Corps, Plaintiff/Relator worked as a hydraulics and structure mechanic for FA-18 Hornets. He was the Quality Representative for the airframe shop

11. Plaintiff/Relator was meritoriously promoted twice.

12. Plaintiff/Relator was stationed at MCAS Miramar in San Diego, California. He completed two West Pacs in the South Pacific.

13. Plaintiff/Relator received his B.A. in 2006 from Rutgers University in Camden, New Jersey.

14. Plaintiff/Relator has been employed by Boeing for three (3) years.

15. Plaintiff/Relator is currently an H-47 Dynamics Center Production Manager at the Boeing plant in Ridley Park, Pennsylvania.

16. Prior to his current position, Plaintiff/Relator was a MH-47 Modification Center Production Manager at the Boeing plant located in Ridley Park, Pennsylvania.

**B. The Boeing Company**

17. Boeing is a Delaware Corporation with its headquarters in Chicago, Illinois.

18. Boeing is one of the world's largest aerospace firms. Boeing is organized based upon the product and services it offers and operates in five (5) principal segments:

- Commercial Airplanes;
- Three (3) segments that comprise Boeing's Integrated Defense Systems ("IDS") business:
  - Boeing Military Aircraft
  - Network and Space Systems and
  - Global Services and Support
- Boeing Capital Corporation

19. Boeing's IDS business is involved in the research, development, production, modification and support of the following products and related systems and services: military; aircraft; unmanned systems; missiles; space systems; missile defense systems; satellites; and communication, information and battle management systems. IDS's primary customer is the United States Department of Defense.

20. Boeing's IDS business produced \$32 billion in revenue in 2008. Approximately 80% of IDS 2008 revenues were paid to Boeing by the DOD.

21. The Boeing Military Aircraft segment of the IDS business is involved in the research, development, production, and modification of military aircraft, precision engagement, and mobility products and services.

22. The Boeing Military Aircraft segment employs approximately 25,000 at 10 primary locations, including Ridley Park, Pennsylvania.

23. Boeing Military Aircraft has four divisions: Airborne Anti-Submarine Warfare and Intelligence; Surveillance and Reconnaissance; Global Mobility Systems; and Rotorcraft Systems.

24. Boeing Rotorcraft Systems is a world leader in designing, developing, and manufacturing transport and combat helicopters and tilt rotor aircraft, including the Chinook CH-47 Helicopter.

25. Boeing produces the Chinook Helicopter at its plant located at Route 291 and Stewart Avenue, Ridley Park, Pennsylvania 19078.

26. Boeing's Ridley Park plant has approximately 5,000 employees and contractors.

### C. The Chinook Helicopter

27. The Chinook Helicopter is a multi-mission, heavy-lift transport helicopter. Its primary mission is to move troops, artillery, ammunition, fuel, water, barrier materials, supplies and equipment on the battlefield. Its secondary missions include medical evacuation, disaster relief, search and rescue, aircraft recovery, fire fighting, parachute drops, heavy construction and civil development.

28. Chinook Helicopters were introduced in 1962 as the CH-47 Chinook, and models A, B, C were deployed in Vietnam. A central element in the Gulf War, the Chinook continues to be the standard for the United States Army in the global campaign against terrorism. Since its introduction approximately 1,179 Chinook helicopters have been built.

29. Model CH-47D Chinooks are currently in use by the United States Army, United States Army Reserve and National Guard and international military forces.

30. All of the Army's CH-47 Chinooks are to be upgraded to the new CH-47F models by 2018 as the result of a Modernization Contract between the United States Department of Defense and Boeing, the helicopter's manufacturer.

31. Under the contract, the Army will buy 55 new CH-47F Chinooks and 397 existing CH-47Ds will be remanufactured into CH-47F's.

32. The CH-47F is an advanced multi-mission helicopter. It contains a fully-integrated digital cockpit management system, Common Aviation Architecture Cockpit and advanced cargo-handling capabilities that compliment mission performance and handling characteristics. The CH-47F will be powered by two 4,868-horsepower Honeywell T55-GA-714A engines, enabling the helicopter to reach speeds greater than 195 mph and transport payloads weighing more than 24,000 lbs.

33. The Army Modernization Contract calls for restoration of CH-47D airframes to their original condition and extend the aircraft's life expectancy another 20 years (total life of 60 years) until approximately 2030.

34. In addition to the CH-47Fs, the United States Army Modernization Program calls for 61 MH-47G Remanufactured aircraft to be used by Special Forces Units.

35. The MH-47G Special Operations Chinook is the seventh and most capable iteration of the Chinook. The MH-47G is called upon to complete long-range covert missions over a 300 nautical mile radius, at low level, day or night, in adverse weather, over any terrain.

36. The Army Special Operations Command intends to use the MH-47G to complete clandestine exfiltration and infiltration missions.

37. Boeing produces both the CH-47F and MH-47G at its Ridley Park, Pennsylvania location.

38. CH-47 helicopters that are remanufactured are to be rebuilt from the ground up and receive recapitalized depot-level repair components that are nearly "zero hour" or new.

39. Total procurement costs through 2018 under the plan are expected to total \$11.4 billion.

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

40. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §3729 and 3730(e). There has been no statutorily relevant public disclosures of the "allegations or transactions" in the Complaint. Plaintiff/Relator, moreover, would qualify under that section of the FCA as an "original source" of the allegations in this Complaint, even had such a public disclosure occurred.

41. The Court has personal jurisdiction over Defendant pursuant to 28 U.S.C. §3732(a) because that section authorizes nationwide service of process and because Defendant has minimum contacts with the United States. Moreover, Defendant can be found in, resides and transacts business in the Eastern District of Pennsylvania.

42. Venue is proper in this District pursuant to 31 U.S.C. §3731(a) because the Ridley Park plant is here. Defendant can be found in and transacts business in the Eastern District of Pennsylvania. At all relevant times to this Complaint, Defendant regularly conducted substantial business within the Eastern District of Pennsylvania and maintained employees and an office in Pennsylvania. In addition, statutory violations as alleged herein, occurred in this district.

#### **IV. APPLICABLE LAW**

##### **A. Federal False Claims Act**

**The Federal FCA provides, in pertinent part:**

(a) Any person who (1) knowingly presents, or causes to be presented, to an officer or employee of the United States government or a member of the Armed Forces of the United States of America a false or fraudulent claim for payment or approval; (2) knowingly makes, uses or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government; (3) conspires to defraud the Government by getting a false claim to the United States Government for a civil penalty of not less than \$5,500 and not more than \$11,000, plus three (3) times the amount of damages which the Government sustains because of the act of that person.

(b) For purposes of this section, the term "knowing" and "knowingly" mean that a person, with respect to information (1) has actual knowledge of the information; (2) acts in deliberate ignorance of the truth or falsity of the information; or (3) acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent is required.

#### **V. ALLEGATIONS**

##### **A. Boeing Has Repeatedly Submitted False Claims and False Records To The United States Department Of Defense In Connection With Its Manufacturing Of The CH-47 And MH-47 Chinook Helicopters**

###### **(1) Overview Of Boeing's Contracts With The Department Of Defense To Manufacture Chinook Helicopters**

43. Beginning in approximately 2003, the DOD awarded Boeing -- Ridley Park contracts to produce CH-47F and MH-47G model Chinook helicopters as part of the United States Army's effort to modernize its fleet of aging heavy lift helicopters. Such contracts include, but are not limited to the following: Contract Nos. W58RGZ -- 04-C-0120; W58RGZ -- 04-G-0023; and W58RGZ-08-C-0098.

44. In the contracts between Boeing and the DOD, the scope of work to be performed by Boeing on the Chinook Helicopters is defined as either "Basic" work or "Over and Above" work.

45. "Basic" work is work that Boeing is contractually required to accomplish and such work is covered by the negotiated contract price.

46. "Over and Above" work is beyond the defined scope of the "Basic" work.

47. For "Over and Above" work, Boeing is paid its actual cost for time and materials actually incurred, over and above the basic modernization price.

48. Because the remanufactured CH-47Fs that Boeing produces are modified older model CH-47Ds, many of the airframes of the older model Chinook Helicopters need to be overhauled in order to bring the airframes up to specifications.

49. Once the airframes meet specifications, the necessary modifications can be performed to convert the old aircraft into a newer model Chinook Helicopter.

(2) Boeing's Procedures For Performing "Over And Above" Work On Chinook Helicopters

50. When Boeing receives an aircraft for modification, a Boeing Quality Inspector inspects it in order to identify any discrepancies.

51. The inspectors who work in Boeing's Quality Department are generally experienced Boeing shop personnel.

52. A discrepancy on the aircraft is any material, part or assembly, such as the airframe, that varies from the aircraft specification requirements in the contract.

53. When a discrepancy is identified, the inspector documents the discrepancy on a computer-generated form. This form is known as a High Time Depot Maintenance (HTDM) Pickup Non-Conformance Record (NCR).

54. Each discrepancy is assigned a separate "N Order Number." The N Order Number is the number in Boeing's Computer System used to identify the discrepancy.

55. Once a discrepancy is identified, a member of the Boeing Pro-Shop Analysis (PSA) Team reviews the discrepancy.

56. Members of the PSA Team are Boeing employees who usually have an engineering background or are experienced shop personnel.

57. A member of Boeing's PSA Team reviews each discrepancy to determine whether the work needed to fix the discrepancy is within the "Basic" work specified by the contract or exceeds the scope and is therefore "Over and Above" work.

58. Once that determination is made, a Boeing engineer reviews the discrepancy and outlines the steps necessary to correct it.

59. The Financial Representative on Boeing's PSA team then estimates the labor hours required to correct the deficiency, and negotiates the estimated hours with the Administrative Contracting Officer (ACO) or ACO's Representative.

60. The ACO is a DOD Contracting Officer whose primary duties involve administration of the government contract.

61. A work authorizing document called an "N Order" is then entered into Boeing's Computer System so that the work may be completed by a Boeing mechanic.

62. When a Boeing mechanic performs work on the N Order, the mechanic can complete only the work outlined in the Boeing engineer's plan to correct the specific discrepancy.

63. If the mechanic determines that a discrepancy cannot be corrected until additional work is performed, that is considered an additional discrepancy, and the mechanic must notify a Boeing inspector. Such notification is referred to as a "re-submit request."

64. When a re-submit request is made, a new inspection, disposition and estimation is performed for that additional discrepancy, following the same process used for the original discrepancy.

65. A mechanic may not correct a discrepancy until it has been evaluated by engineering and work has been approved and authorized.

(3) Boeing's Scheme to Bill the United States for Inflated Hours of "Over and Above" Work on Chinook Helicopters

66. Since at least approximately 2003, Defendant has engaged in a scheme to fraudulently bill the DOD for inflated hours of "Over and Above" work on Chinook Helicopters.

67. Boeing facilitated overbilling by inflating the number of hours its employees claimed as "Over and Above." This overbilling was accomplished by (1) shifting time spent performing basic work to "Over and Above" work; and (2) performing personal errands while they were billing the DOD for performing "Over and Above" work on Chinook Helicopters.

68. The purpose of Defendant's scheme is to: 1) allow Boeing managers and mechanics to achieve the Cost Performance Index goal; 2) allow Boeing employees to perform personal errands on company time; and 3) improve Defendant's bottom line.

(a) Boeing's Cost Performance Index

69. Boeing evaluates the performance of each of its Chinook Helicopter mechanics by using a Cost Performance Index ("CPI").

70. The CPI is an indicator of how efficiently a mechanic is performing his/her work.

71. CPI is calculated by dividing the budgeted cost of work performed by the actual cost of work performed for "Basic" work under the contract.

72. For example, if basic work is budgeted for 20 hours but takes 25 hours, the CPI is .80.

73. The goal is for each mechanic to achieve a CPI of 1.0.

74. Performance of Boeing Managers on the modernization program is evaluated based upon the aggregate CPI for all of the mechanics that they supervise.

75. Mechanics and Managers who do not consistently achieve at least a 1.0 CPI could face negative job evaluations and could potentially face disciplinary action.

76. In order to ensure that their CPI is 1.0, mechanics game the system by recording hours relating to "Basic" work that are in excess of the budgeted hours, as "Over and Above" work.

77. When a mechanic commences work on a job, she "jobs in" to that job in the Boeing Computer System.

78. A mechanic "jobs in" either by swiping a Boeing magnetic identification badge on an RFI badge reader attached to the Boeing Computer System, or by entering a code using the computer keyboard.

79. The timekeeping software used in the Boeing Computer System is the Manufacturing Execution System (the "MES").

80. The MES is available on terminals throughout the Ridley Park plant. Mechanics can "job in" to any job in the Boeing Computer System from any terminal in the plant that has the MES.

81. To find "Basic" work in the Boeing Computer System, a mechanic can search by the specific job number associated with the work.

82. To find "Over and Above" work in the Boeing Computer System, a mechanic can either: 1) search for "Basic" work with an N Order attached; or 2) search by aircraft, part

number, job number or shop number and click the link for "all open NCRs," which will display all of the "Over and Above" work.

83. The Boeing Computer System tracks the mechanics' time to that job until the mechanic "jobs out" to stop billing time to that job.

84. Relator has personal knowledge, based upon his experience as a manager, that when Boeing mechanics have reached the budgeted hours for "Basic" work but the work is not completed, they will frequently "job in" to "Over and Above" work and complete the "Basic" work while billing the DOD for "Over and Above" time.

85. Boeing mechanics repeatedly do this to ensure that their CPI is as close to 1.0 as possible.

86. Boeing managers not only allow this practice but encourage Boeing mechanics to perform "Basic" work while billing "Over and Above" time to ensure that the managers also meet their CPI goal of 1.0.

87. By way of example, there are nine positions on the Chinook modification assembly line. Moving the airframe from one assembly line position to another position is "Basic" work under the DOD contracts.

88. Boeing is budgeted between 4 and 8 hours of "Basic" work for the move, depending upon the assembly line position. On average, moving the airframe one assembly line position will take 4 to 8 employees 1 hour or more. One employee cannot move the multi-ton airframe.

89. Relator has personal knowledge, based upon his experience as a manager, that Boeing mechanics have billed zero hours to the assembly line move and closed out that job in the Boeing Computer System. The mechanics will move the airframe at a later time while "jobbed

in' to an "Over and Above" job. Thus, Boeing bills the DOD "Over and Above" time for work that is considered "Basic" work that is included in the contract.

90. On February 5, 2009, mechanic Michael Toriello billed zero "Basic" hours for moving an airframe from assembly line position 8 to assembly line position 9. No other Boeing employees "jobbed in" to the assembly line move.

91. The airframe was, in fact, moved. Based upon his experience as a manager, Relator believes that the airframe was moved after February 5, 2009 by Boeing mechanics that were "jobbed in" to "Over and Above" work.

(b) Boeing has Submitted Numerous False Claims and False Documents to the DOD for "Over and Above" Work on the Chinook Helicopter

92. Defendant's scheme is systemic and has occurred repeatedly at Boeing's Ridley Park plant since at least 2003.

93. During the course of this scheme, Defendant submitted numerous false claims to the DOD for payment for inflated hours of "Over and Above" work.

94. During the course of this scheme, Defendant submitted numerous documents to the DOD, through the ACO, in support of the false claims for payment for inflated hours of "Over and Above" work.

95. Defendant knew that it was not entitled to reimbursement for inflated hours of "Over and Above" work.

96. Each request for payment submitted by Defendant for inflated hours of "Over and Above" work was a false claim under the FCA.

97. Each document that Defendant submitted to the DOD and the ACO in support of the false claims for payment for inflated hours of "Over and Above" work is a violation of the FCA.

98. As a direct result of Defendant's fraudulent conduct in submitting bills for payment to the DOD for inflated hours of "Over and Above" work, the DOD has paid false or fraudulent claims for payment that would not have been paid but for Defendant's intentional conduct.

99. Evidence of the Defendant's Scheme to defraud the DOD as described above includes, but is not limited to, the following:

100. Between October 24, 2003 and December 13, 2003, Boeing mechanics performed "Over and Above" work (N3873052) on Contract No. DAAH23-02-C-0093. The "Over and Above" work was budgeted for 12 hours. The estimated work included: removing two existing vertical angles and straps; fabricating two doublers; installing two doublers; and installing 28 fasteners. Boeing billed the DOD 44.0 hours to complete the work. Relator knows, based upon his training and experience, that such work could have been performed in the 12 hours allotted, and could not have taken 44.0 hours to complete.

101. Between February 5, 2004 and February 11, 2004, Boeing mechanics performed "Over and Above" work (N3871985) on Contract No. USZA95-02-C-0024. The "Over and Above" work was estimated to be completed in 3.1 hours. The estimated work included: removing a fastener from discrepant area; trimming away damaged area; fabricating a repair doubler; and installing the 4.0 x 1.7 inch doubler with sheet metal fasteners into the existing holes. Boeing billed the DOD 25.6 hours to complete the work. Relator knows, based upon his

training and experience, that such work could have been performed in the 3.1 hours allotted, and could not have taken 25.6 hours to complete.

102. On February 13, 2004, Boeing mechanics performed "Over and Above" work (N3872189) on Contract No. USZA95-02-C-0024. The "Over and Above" work was estimated to be completed in 2.1 hours. The estimated work included: removing a fitting; making a doubler; and drilling cracks; installing the 2.5 x 2.9 inch doubler with XHE4 rivets. Boeing billed the DOD 38.4 hours to complete the work. Relator knows, based upon his training and experience, that such work could have been performed in the 2.1 hours allotted, and could not have taken 38.4 hours to complete.

103. Between September 28, 2005 and December 19, 2005, Boeing mechanics performed "Over and Above" work (N5840655) on Contract No. W58RG2-04-0120. The "Over and Above" work was estimated to be completed in 5.5 hours. The estimated work included: discarding a corroded splice fitting; and obtaining a new splice fitting. Boeing billed the DOD 38.4 hours to complete the work. Relator knows, based upon his training and experience, that such work could have been performed in the 5.5 hours allotted, and could not have taken 38.4 to complete.

104. Between August 5, 2005 and January 19, 2006, Boeing mechanics performed "Over and Above" work (N5839423) on Contract No. W58RG2-04-C-0120. The "Over and Above" work was estimated to be completed in 14 hours. The estimated work included: fabricating and installing an 11 x 15 inch HT web; and installing an 8 x 13 inch web with fasteners. Boeing billed the DOD 24.8 hours to complete the work. Relator knows, based upon his training and experience, that such work could have been performed in the 14 hours allotted, and could not have taken 24.8 hours to complete.

105. Between January 5, 2006 and January 28, 2006, Boeing mechanics performed "Over and Above" work (N5841978) on Contract No. W58RG2-04-C-0120. The "Over and Above" work was estimated to be completed in 4.5 hours. The estimated work included: removing and discarding a discrepant clip and angle; and fabricating and installing a clip and angle. Boeing billed the DOD 22.2 hours to complete the work. Relator knows, based upon his training and experience, that such work could have been performed in the 4.5 hours allotted, and could not have taken 22.2 hours to complete.

106. Between October 26, 2006 and December 16, 2006, Boeing mechanics performed "Over and Above" work (N5854021) on Contract No. W58RG2-04-G-0023. The "Over and Above" work was estimated to be completed in 17.7 hours. The estimated work included: obtaining and installing multiple clips; discarding clips; obtaining and installing a HT cove panel; removing and discarding a discrepant web; and installing a new web. Boeing billed the DOD 37.2 hours to complete the work. Relator knows, based upon his training and experience, that such work could have been performed in the 17.7 hours allotted, and could not have taken 37.2 hours to complete.

107. Between October 26, 2006 and December 29, 2006, Boeing mechanics performed "Over and Above" work (N5854028) on Contract No. W58RG2-04-G-0023. The "Over and Above" work was estimated to be completed in 30.1 hours. The estimated work included: removing and scraping discrepant shelf; installing new HT web and clip; obtaining and installing doubler; installing HT cove assembly; and trimming out discrepant joggle area. Boeing billed the DOD 68.1 hours to complete the work. Relator knows, based upon his training and experience, that such work could have been performed in the 30.1 hours allotted, and could not have taken 68.1 hours to complete.

108. Between October 26, 2005 and January 8, 2006, Boeing mechanics performed "Over and Above" work (N5837123) on Contract No. W58RG2-04-C-0120. The "Over and Above" work was estimated to be completed in 7.5 hours. The estimated work included: removing discrepant stiffener; trimming upper EOP; installing fastener; fabricating and installing stiffener; trimming out discrepant area; fabricating shim; and installing shim. Boeing billed the DOD 31.4 hours to complete the work. Relator knows, based upon his training and experience, that such work could have been performed in the 7.5 hours allotted, and could not have taken 31.4 hours to complete.

109. Between December 18, 2006 and January 30, 2007, Boeing mechanics performed "Over and Above" work (N5853621) on Contract No. W58RG2-04-G-0023. The "Over and Above" work was estimated to be completed in 7 hours. The estimated work included: removing and scraping discrepant field repair; fabricating two doublers; and installing two doublers. Boeing billed to DOD 24.1 hours to complete the work. Relator knows, based upon his training and experience, that such work could have been performed in the 7 hours allotted, and could not have taken 24.1 hours to complete.

110. Between October 12, 2006 and January 30, 2007, Boeing mechanics performed "Over and Above" work (N5853612) on Contract No. W58RG2-04-G-0023. The "Over and Above" work was estimated to be performed in 18.8 hours. The estimated work included: removing discrepant Floor Cove assembly; obtaining and installing doubler; installing cover plate; and installing HT cove assembly. Boeing billed the DOD 49.2 hours to complete the work. Relator knows, based upon his training and experience, that such work could have been performed in the 18.8 hours allotted, and could not have taken 49.2 hours to complete.

111. Between October 2, 2006 and December 14, 2006, Boeing mechanics performed "Over and Above" work (N5853650) on Contract No. W58RG2-04-G-0023. The "Over and Above" work was estimated to be performed in 15.4 hours. The estimated work included: removing discrepant floor cove and discard; installing nut plates and HT doubler; installing IIT cove assembly; and removing discrepant clip. Boeing billed DOD 32.8 hours to complete the work. Relator knows, based upon his training and experience, that such work could have been performed in the 15.4 hours allotted, and could not have taken 32.8 hours to complete.

112. Between October 5, 2006, and January 19, 2007, Boeing mechanics performed "Over and Above" work (N5854009) on Contract No. W58RG2-04-G-0023. The "Over and Above" work was estimated to be performed in 25.4 hours. The estimated work included: installing HT0071968-1 angle; installing three rivets; removing discrepant shelf; installing shelf; installing HT web; removing discrepant floor cove assembly; installing doubler; and attaching HT cove. Boeing billed the DOD 59.8 hours to complete the work. Relator knows, based upon his training and experience, that such work could have been performed in the 25.4 hours allotted, and could not have taken 59.8 hours to complete.

113. Between November 28, 2006 and January 29, 2007, Boeing mechanics performed "Over and Above" work (N5854029) on Contract No. W58RG2-04-G-0023. The "Over and Above" work was estimated to be performed in 14.5 hours. The estimated work included: fabricating doubler; fabricating angle; opening discrepant holes in skin; trimming off inboard flange; and installing angle and doubler. Boeing billed the DOD 52.3 hours to complete the work. Relator knows, based upon his training and experience, that such work could have been performed in the 14.5 hours allotted, and could not have taken 52.3 hours to complete.

114. Between November 21, 2007 and January 7, 2008, Boeing mechanics performed "Over and Above" work (N5901679) on Contract No. W58RGZ-04-G-0023. The "Over and Above" work was estimated to be performed in 19.5 hours. The estimated work included: fabricating multiple doublers; removing discrepant step box assembly; and installing step box assembly. Boeing billed the DOD 67.9 hours to complete the work. Relator knows, based upon his training and experience, that such work could have been performed in the 19.5 hours allotted, and could not have taken 67.9 hours to complete.

115. Between April 10, 2008 and June 26, 2008, Boeing mechanics performed "Over and Above" work (N5911354) on Contract No. W58RGZ-04-G-0023. The "Over and Above" work was estimated to be performed in 5 hours. The estimated work included: removing and replacing 114S3156-21 web; and re-installing fasteners. Boeing billed the DOD 14.2 hours to complete the work. Relator knows, based upon his training and experience, that such work could have been performed in the 5 hours allotted, and could not have taken 14.2 hours to complete.

116. Between March 25, 2009 and April 1, 2009, Boeing mechanics performed "Over and Above" work (N6036126) on Contract No. W58RG2-04-G-0023. The "Over and Above" work was estimated to be performed in 4 hours. The estimated work included: ordering and installing a doubler. Boeing billed the DOD 8.8 hours to complete the work. Relator knows, based upon his training and experience, that such work could have been performed in the 4 hours allotted, and could not have taken 8.8 hours to complete.

(c) Boeing Repeatedly Bills the United States for Time that Boeing Employees Spend Performing Personal Errands

117. Additionally, the mechanics will "job in" to an "Over and Above" job but not actually perform any work.

118. Instead, the mechanics will do such things as take a break, complete personal errands, or even leave and pick up lunch for co-workers.

119. Relator observed personally Boeing employee, Andrew Gallo, take hoagie orders for between 30 and 60 Boeing employees once a week for the past three years. Mr. Gallo will collect the money from the employees (making a profit on each hoagie ordered), place the order with Primo Hoagies and leave the Boeing plant to pick-up the hoagies. Upon his return to the Boeing plant, Mr. Gallo will then sit at a table and distribute the hoagies to the employees who placed an order.

120. The entire "hoagie process" takes Mr. Gallo approximately 3 to 4 hours to complete.

121. Relator has personal knowledge, based upon his experience as a manager, that Mr. Gallo is billing the DOD for performing "Over and Above" work while he is completing the "hoagie process."

122. Relator has information that Mr. Gallo has performed the "hoagie process" for the last 20 years.

123. Relator observed personally Michael Toriello bill the DOD "Over and Above" time while not performing any work.

124. Boeing provides that each shop has a "lead man." The lead man is an experienced mechanic who can assist other mechanics with their work when needed while also performing their own work.

125. Joe Toriello, Michael Toriello's supervisor and brother, allows Michael to be a "non-working lead man." He allows Michael to sit at a desk and give work to the other mechanics while not performing any of his own work.

126. Relator has personal knowledge, based upon his experience as a manager, that Michael Toriello, while not performing any work, is billing the DOD for "Over and Above" work.

127. Boeing records show that Michael Toriello billed the DOD for performing "Over and Above" work on multiple N-Orders, including, but not limited to the following: N5837124; N5854009; N5853612; N5854028; N5854021; N5854029; N5854022; N5853621; N59000357; and N5901679. Relator believes, based upon his experience as a manager, that Michael Toriello did not actually perform the work that he billed on these N-Orders.

128. Relator has personal knowledge, based upon his experience as a manager, that Boeing employees are taking coffee and breakfast breaks while billing the DOD for performing "Over and Above" work.

129. Relator has personally observed make-shift cots used by Boeing employees to sleep during their shifts. Additionally, Relator has been informed of employees sleeping during their shift by other Boeing employees.

130. Relator has personal knowledge, based upon his experience as a manager, that when employees are sleeping during their shift they are billing the DOD for performing "Over and Above" work.

131. Relator has personally observed employees talking on their cellular telephones and using the Internet while billing the DOD for performing "Over and Above" work.

132. Relator has personally observed an employee riding a bicycle through the plant selling peanuts and hot dogs, while billing the DOD for performing "Over and Above" work.

133. All of these things are done while the mechanic is billing the DOD for completing "Over and Above" work that is not actually being performed.

134. Realtor raised his concerns about these practices to his superiors and colleagues and was either ignored or told, among other things, "not to worry about it" or to "keep his mouth shut."

(d) Boeing Earns Substantial Profit from its Fraudulent Scheme to Bill the DOD for Inflated Hours of "Over and Above" Work on the Chinook Helicopter

135. Defendant receives substantial money from the DOD for performing "Over and Above" work on Chinook Helicopters.

136. Boeing is paid by the DOD for its actual costs for time and materials for performing "Over and Above" work on Chinook Helicopters. The monies that Boeing receives for performing "Over and Above" work is in addition to the contracted fees that Boeing receives from the DOD for performing "Basic" work on Chinook Helicopters.

137. Defendant's fraudulent scheme to bill the DOD for inflated hours of "Over and Above" work on Chinook Helicopters, therefore, generates substantial revenue for Boeing, in addition to the contracted fees it is already receiving from the DOD for performing the "Basic" contracted work.

138. Upon information and belief, Defendant has, since at least 2003, received substantial sums of money from the DOD as a result of Defendant's fraudulent scheme to bill the DOD for inflated hours of "Over and Above" work on Chinook Helicopters.

**COUNT I**

**VIOLATION OF FALSE CLAIMS ACT**

**31 USC § 3729(A)(1)(A), (B)**

139. Relator realleges Paragraphs 1 through 138 as though fully set forth herein.

140. Defendant Boeing has, since at least 2003, knowingly presented, and/or caused to be presented to the DOD numerous false claims for reimbursement for inflated hours of "Over and Above" work.

141. Each false claim that Defendant Boeing submitted to the DOD for inflated hours of "Over and Above" work violates the FCA, 31 USC § 3729(A)(1)(A).

142. Each document that Defendant Boeing submitted to the DOD and/or ACO in support of Boeing's false claim for reimbursement for inflated hours of "Over and Above" work violates the FCA, 31 USC § 3729(A)(1)(B).

143. All of the Defendant's conduct described in the Complaint was knowing, as the term is used in the Federal False Claims Act.

144. WHEREFORE, Relator requests the following relief:

- A. Judgment against Defendant for the fines in an amount of damages to the United States has sustained because of Defendant's action plus a civil penalty of \$11,000.00 for each violation of the Federal False Claims Act;
- B. 25% of the proceeds of this action if the United States elects to intervene, and 30% of the proceeds of this action if the United States elects not to intervene;
- C. Relator's attorneys' fees, costs and expenses;
- D. Such other relief as the Court deems appropriate.

**JURY DEMAND**

Relator demands trial by jury for all claims for which such jury is available.

Respectfully submitted,

PIETRAGALLO, GORDON, ALFANO  
BOSICK & RASPANTI, LLP

By: \_\_\_\_\_

  
MARC S. RASPANTI, ESQUIRE  
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*Attorneys for Vincent A. DiMezza, Jr.*

*Under Seal*

10-cv-634

JS 44 (Rev. 12/07)

**NS**

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. Approval by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. **INSTRUCTIONS ON THE REVERSE OF THIS FORM**

**10 634**

**I. (a) PLAINTIFFS**  
 United States of America,  
 Ex Rel. Vincent A. DiMazza, Jr.

**(b) County of Residence of First Listed Plaintiff** \_\_\_\_\_  
 (EXCEPT IN U.S. PLAINTIFF CASES)

**(c) Attorney's (Firm Name, Address, and Telephone Number)**  
 See Attached

**DEFENDANTS**  
 The Boeing Company

**County of Residence of First Listed Defendant** Cook County, IL  
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED

Attorneys (if known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

1 U.S. Government Plaintiff  
 2 U.S. Government Defendant

3 Federal Question (U.S. Government Not a Party)  
 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State	PTF <input type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

<b>CONTRACT</b>	<b>TORTS</b>	<b>FORFEITURE/PENALTY</b>	<b>BANKRUPTCY</b>	<b>OTHER STATUTES</b>
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Incl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 198 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Fixed & Long <input type="checkbox"/> 625 Drug Related Seizure of Property (1 USC 881) <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reprimand & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Emp't Rel. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 SSA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 (R.N. Third Party 26 USC 7609) <input type="checkbox"/> 890 State Reapportionment <input type="checkbox"/> 891 Antitrust <input type="checkbox"/> 892 Banks and Banking <input type="checkbox"/> 893 Commerce <input type="checkbox"/> 894 Deportation <input type="checkbox"/> 895 Bankruptcy Reorganization and Corrupt Organizations <input type="checkbox"/> 896 Consumer Credit <input type="checkbox"/> 897 Cable/Sat. TV <input type="checkbox"/> 898 Selective Service <input type="checkbox"/> 899 Securities Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 15 USC 5-16 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 899 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 892 Environmental Matters <input type="checkbox"/> 894 Energy Assistance Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of an Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutional rights of State Statutes
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<b>PRISONER PETITIONS</b>		
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Lots to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 411 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 410 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 530 Civil Rights <input type="checkbox"/> 535 Prison Condition		

**V. ORIGIN** (Place an "X" in One Box Only)

1 Original Proceeding  
 2 Removed from State Court  
 3 Remanded from Appellate Court  
 4 Reinstated or Reopened  
 5 Transferred from another district (specify)  
 6 Multidistrict Litigation  
 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
31 U.S.C. Section 3729, et seq.

Brief description of cause:  
Qui Tam Action Under the False Claims Act

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

**DEMAND \$** \_\_\_\_\_

**JURY DEMAND:**  Yes  No

**VIII. RELATED CASE(S) IF ANY** (See instructions)

JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE: 2/16/10

SIGNATURE OF ATTORNEY OF RECORD: Michael A. Morse

FILED: **FEB 16 2010**

FOR OFFICE USE ONLY

RECEIVED \$ \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFF \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

**ATTACHMENT - CIVIL COVER SHEET**  
**Section 1(c):**

United States of America, ex rel.  
Vincent A. DiMezza, Jr.

v.

The Boeing Company

Marc S. Raspanti, Esquire  
Michael A. Morse, Esquire  
Christopher A. Iacono, Esquire  
PIETRAGALLO GORDON ALFANO  
BOSICK & RASPANTI, LLP  
1818 Market Street  
Suite 3402  
Philadelphia, PA 19103  
Phone: 215-320-6200  
Fax: 215-981-0082

*Attorneys for Plaintiff, Vincent A. DiMezza, Jr.*

NS

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate judicial.

Address of Plaintiff: 814 N. Read Avenue, Runnemede, New Jersey 08078 10 - 684

Address of Defendant: The Boeing Company, 100 North Riverside, Chicago, IL 60606

Place of Accident, Incident or Transaction: The Boeing Company, Route 291 and Stewart Av, Ridley Park, PA 19078 (Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock? (Attach two copies of the Disclosure Statement Form in accordance with Fed R Civ P 7.1(a)) Yes [ ] No [X]

Does this case involve multidistrict litigation possibilities? Yes [ ] No [X]

RELATED CASE, IF ANY

Case Number: Judge: Date Terminated:

Civil cases are deemed related when yes is answered to any of the following questions:

- 1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? Yes [ ] No [X]
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? Yes [ ] No [X]
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminates action in this court? Yes [ ] No [X]
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? Yes [ ] No [X]

CIVIL (Place [X] in ONE CATEGORY ONLY)

- A. Federal Question Cases: 1. Indemnity Contract, Marine Contract, and All Other Contracts; 2. FELA; 3. Jones Act-Personal Injury; 4. Antitrust; 5. Patent; 6. Labor-Management Relations; 7. Civ I Rights; 8. Habeas Corpus; 9. Securities Act(s) Cases; 10. Social Security Review Cases; 11. All other Federal Question Cases - Qui Tam Action, Violation of the False Claims Act (Please specify)
B. Diversity Jurisdiction Cases: 1. Insurance Contract and Other Contracts; 2. Airplane Personal Injury; 3. Assault, Defamation; 4. Marine Personal Injury; 5. Motor Vehicle Personal Injury; 6. Other Personal Injury (Please specify); 7. Products Liability; 8. Products Liability - Asbestos; 9. All other Diversity Cases (Please specify)

ARBITRATION CERTIFICATION

(Check Appropriate Category) Michael A. Morse, counsel of record do hereby certify: Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs. Relief other than monetary damages is sought.

DATE: 2/16/10 Attorney-at-Law: [Signature] 80507 Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 2/16/10 Michael A. Morse Attorney-at-Law 80507 Attorney I.D.#

FEB 16 2010

*Under Seal*

**NS**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**CASE MANAGEMENT TRACK DESIGNATION FORM**

United States of America,  
Ex Rel. Vincent A. DiMezza, Jr.

CIVIL ACTION

v.

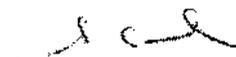
The Boeing Company

**10**      **687**  
NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ( )
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ( )
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ( g )
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ( )

<u>2/16/10</u>	 <u>Michael A. Morse</u>	<u>Vincent A. DiMezza, Jr.</u>
<b>Date</b>	<b>Attorney-at-law</b>	<b>Attorney for</b>
<u>(215) 320-6200</u>	<u>(215) 981-0082</u>	<u>man@pietragallo.com</u>
<b>Telephone</b>	<b>FAX Number</b>	<b>E-Mail Address</b>

(Civ. 660) 10/02