

RECEIVED
DEC 17 2012
CHAMBERS OF
ALVIN K. HELLERSTEIN
U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA *ex rel.* JOHN
DOE and THE STATE OF NEW YORK *ex rel.*
JOHN DOE,

Plaintiffs,

v.

STRUCTURED EMPLOYMENT ECONOMIC
DEVELOPMENT CORPORATION,

Defendant.

UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

v.

STRUCTURED EMPLOYMENT ECONOMIC
DEVELOPMENT CORPORATION, et al.,

Defendants.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 12/18/12

**CONSENT DECREE AND ORDER
OF SETTLEMENT AND
DISMISSAL AS TO STRUCTURED
EMPLOYMENT ECONOMIC
DEVELOPMENT CORPORATION**

11 Civ. 6425 (AKH)

WHEREAS, this Stipulation and Order of Settlement and Dismissal (the "Stipulation") is entered into by and among plaintiff the United States of America (the "United States"), by its attorney Preet Bharara, United States Attorney for the Southern District of New York, and defendant Structured Employment Economic Development Corporation ("Defendant" or "SEEDCO"), and relator William Harper ("Relator") (collectively, the "Parties"); and

WHEREAS, from at least April 1, 2004 through at least April 25, 2012 (the "relevant time period"), SEEDCO operated Workforce1 Career Centers in New York City, pursuant to contracts entered into by and between SEEDCO and New York City's Small Business Services Division;

WHEREAS, a primary function of the Workforce1 Career Centers is to place unemployed and underemployed persons in jobs and assist people in retaining and advancing in jobs that they have;

WHEREAS, during the relevant time period, the United States, through the United States Department of Labor (“US DOL”), funded SEEDCO’s operation of the Workforce1 Career Centers through federal grant money provided by the Workforce Investment Act of 1998, 29 U.S.C. § 2801 *et seq.*, and the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5 (collectively, the “WIA” or “WIA funding”);

WHEREAS, on or about September 14, 2011, the Relator filed a *qui tam* action (the “Civil Action”) under the name John Doe, in the United States District Court for the Southern District of New York (the “Court”) pursuant to 31 U.S.C. § 3730(b), the *qui tam* provision of the False Claims Act, 31 U.S.C. §§ 3729, *et seq.* (the “FCA”) and the New York False Claims Act (N.Y. State Finance Law §§187-194). In the Civil Action, the Relator alleged, among other things, that SEEDCO made false claims in connection with job placement programs and retaliated against him in violation the False Claims Act (31 U.S.C. §§ 3729-33) and the New York False Claims Act (N.Y. State Finance Law §§187-194);

WHEREAS, the United States intervened in the Civil Action and filed the Complaint-in-Intervention of the United States of America (the “Federal Complaint”) on May 22, 2012;

WHEREAS, the Federal Complaint alleges, among other things, that SEEDCO, along with the individual defendants, defrauded the United States by, among other things, making misrepresentations about job candidates being placed in jobs purportedly with the assistance of

the Workforce1 Career Centers, and that by these actions and others SEEDCO knowingly caused the submission and payment of false claims seeking federal WIA funding, as well as knowingly made or used false records or statements to the City of New York, which were material to false or fraudulent claims submitted to the United States for payment (including all the allegations in the Federal Complaint and collectively with the allegations of the Relator as described above or as set forth in the Relator's Complaint, the "Covered Conduct," except that the Covered Conduct shall not include the Relator's claim for retaliation under 31 U.S.C. § 3730(h));

WHEREAS, the Federal Complaint seeks treble damages and civil penalties against SEEDCO, under the False Claims Act, 31 U.S.C. §§ 3729-3733, as well as damages under the common law;

WHEREAS, on May 22, 2012, the State of New York served a Notice of Election to Decline Intervention;

WHEREAS, SEEDCO has instituted internal reforms in response to the fraud at its Workforce1 Career Centers;

WHEREAS, the Parties desire to reach a full and final settlement and compromise of the claims that the United States asserts and could assert against SEEDCO by entering into this Consent Decree (the "Consent Decree" or "Stipulation");

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The Parties consent to this Court's exercise of personal jurisdiction over each of them.

2. In settlement of this action, SEEDCO shall pay to the United States, no later than fifteen (15) days after the Effective Date, as defined in Paragraph 30 below, \$1,725,000.00 (the "Settlement Amount") by check, made payable to "Treasurer, United States of America" and shall transmit such funds in accordance with written instructions to be provided by the United States.

3. SEEDCO admits, acknowledges, and accepts responsibility for the fact that, beginning in at least 2009 and ending in 2011, its Workforce1 Career Centers submitted reports to the City of New York representing that job candidates had been placed in jobs by or with the involvement of SEEDCO when they had not, including by falsely reporting that current or prior employment had been obtained by or with the involvement of SEEDCO.

4. SEEDCO further admits and acknowledges that the Consent Decree, including the Settlement Amount, is fair, reasonable, and adequate under the facts and circumstances.

5. The following order of injunctive relief shall become effective 30 days after the Effective Date of this Consent Decree and shall remain in effect for five years thereafter.

- a. SEEDCO shall not violate the False Claims Act (31 U.S.C. §§3729-33).
- b. No person employed by SEEDCO shall participate in the submission to any governmental entity of a record that such person knows is false where the record relates to a contract or program that receives funds from the United States.

- c. During any period of time in which SEEDCO receives funds, directly or indirectly, from the United States, through any United States Department of Labor ("US DOL") program or grant, SEEDCO shall not (unless required by law or government contract) base any SEEDCO employee's salary increase, bonus, or other benefit or incentive on whether that employee's recording or reporting of job placements is sufficient to allow SEEDCO to meet contractual or statutory job placement targets or goals.
- d. During any period of time in which SEEDCO receives funds, directly or indirectly, from the United States, through any US DOL program or grant, SEEDCO shall adhere to the Compliance Plan, appended hereto and incorporated herein as Exhibit 1. A breach of the Compliance Plan shall be a violation of this Consent Decree and Order.
- e. Any person employed by SEEDCO who learns of a violation of paragraph 5(b), above, shall notify the Compliance Officer, as defined in the Compliance Plan, in writing, of such a violation within 14 days of its discovery. Within 14 days of receiving such a report, the Compliance Officer shall notify, in writing, the Chair of SEEDCO's Audit & Finance Committee and any independent auditor responsible for performing an audit required by OMB Circular A-133.
- f. The Compliance Officer shall maintain records of the notifications required by paragraph 5(e), above. The United States shall be entitled to inspect, on 10 days' notice, any files maintained by the Compliance Officer concerning the matters

reported in a notice required by paragraph 5(e). Upon receiving a request for the testimony of a SEEDCO employee with knowledge of a matter reported in a notice required by paragraph 5(e), SEEDCO shall, within 10 days' of receiving such notice, direct such employee to be available to the United States for such questioning.

- g. On a quarterly basis, the Compliance Officer shall send an e-mail to all Seedco employees that includes this statement: "You are prohibited by a Federal Court Order from submitting to a government any record that you know is false where the record relates to a contract or program through which SEEDCO receives funds from the United States. If you know that a SEEDCO employee submitted to a government a record that was false, you are required by a Federal Court Order to report that to the Compliance Officer within 14 days of learning about it. There could be serious repercussions to you if you violate the Federal Court Order. A copy of the Federal Court Order is available from the Compliance Officer."

6. If a SEEDCO employee violates either paragraph 5(b) or the first sentence of paragraph 5(e), SEEDCO shall not be deemed in violation of this Consent Decree on account of such violation if SEEDCO has, in good faith, taken disciplinary action on account of such violation, and corrective action to ensure adherence to the Compliance Plan.

7. Subject to the exceptions in Paragraph 9 below (concerning excluded claims), conditioned upon SEEDCO's timely payment of the full Settlement Amount, the United States and the Relator (for himself and for his heirs, successors, attorneys, agents, and assigns)

release SEEDCO and all of its current and former directors, officers, employees, agents, affiliates, assigns, and insurers (with the exception, for the claims of the United States only, of the individual defendants named in the Federal Complaint, who are not released herein for any personal liability that they may individually have to the United States for the Covered Conduct) from any civil monetary claim arising from the Covered Conduct that the Relator or the United States have or may have against SEEDCO concerning the Covered Conduct, including claims under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; and the common law theories of payment by mistake, unjust enrichment, and fraud.

8. SEEDCO agrees to cooperate fully with the United States in connection with the investigation of SEEDCO's former employees or others in connection with any alleged schemes to defraud the United States or other conduct in connection with job placement reporting at SEEDCO's Workforce1 Career Centers. Specifically, SEEDCO agrees that it shall (a) provide complete and truthful disclosure of all non-privileged information as may be required by the United States with respect to the Covered Conduct, and (b) provide testimony and direct its employees to appear to testify and provide documents as requested by the United States in connection with any criminal, civil, or administrative proceeding in connection with the Covered Conduct.

9. Notwithstanding the release given in Paragraph 7 of this Stipulation, or any other term of this Stipulation, the following claims of the United States are specifically reserved and are not released by this Stipulation:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Any administrative liability, including mandatory suspension or exclusion from US DOL programs;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct; and
- e. Any liability based on obligations created by this Stipulation.

10. SEEDCO shall be in default of this Stipulation if it fails to make the payment set forth in paragraph 2. The United States will provide written notice of the default, to be sent by first-class mail to the undersigned attorney for SEEDCO. In the event of default, the Settlement Amount shall be immediately due and payable, and interest shall accrue at the rate of 5% per annum compounded daily on the remaining unpaid principal balance, beginning seven (7) business days after delivery of the notice of default. If the Settlement Amount is not paid in full within seven (7) business days after delivery of the notice of default, the United States may, at its option: (a) seek specific performance of the Stipulation; (b) offset the remaining unpaid balance of the Settlement Amount from any amounts due and owing SEEDCO by any department, agency or agent of the United States at the time of default; (c) reinstate this lawsuit; or (d) exercise any other rights granted by law, or under the terms of this Stipulation, or recognizable at common law or in equity. SEEDCO shall not contest any offset imposed or any collection action undertaken by the United States pursuant to this paragraph, either administratively or in any State or Federal court. In addition, SEEDCO shall pay the United

States all reasonable costs of collection and enforcement under this paragraph, including attorney's fees and expenses. In the event that the United States opts to rescind this Stipulation pursuant to this paragraph, SEEDCO shall not plead, argue or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel or similar theories, to any civil or administrative claims which relate to the Covered Conduct, except to the extent those defenses were available on date of the filing of the complaint in this action.

11. SEEDCO waives and will not assert any defenses it may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the United States Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the United States Constitution, this Stipulation bars a remedy sought in such criminal prosecution or administrative action. Nothing in this paragraph or any other provision of the Stipulation constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue Code, Title 26 of the United States Code or New York State Tax Law.

12. SEEDCO has provided sworn financial disclosure statements and other financial information to the United States, including information regarding SEEDCO's financial condition as of the period ended August 31, 2012 (the "Financial Statements"), and the United States has relied on the accuracy and completeness of those Financial Statements in entering into this Consent Decree. SEEDCO represents and warrants that the Financial Statements are complete, accurate, and current as of the time such Financial Statements were provided to the

United States, and further represents and warrants that it is not aware of any increases in its estimated Total Net assets set forth in the Financial Statements by \$500,000 or more ("Material Improvements") since August 31, 2012. If the United States learns of asset(s) in which SEEDCO had an interest at the time the Financial Statements were provided to the United States that were not disclosed in the Financial Statements, or if the United States learns of any misrepresentation by SEEDCO on, or in connection with, the Financial Statements, or if the United States learns of any undisclosed Material Improvements in SEEDCO's financial condition between the time it provided the Financial Statements to the United States and the date of the parties' execution of this Agreement, and if such nondisclosure or misrepresentation understates the Total Net Assets set forth in the Financial Statements by \$500,000 or more, the United States may at its option: (1) rescind this Stipulation and Order and reinstate its Federal Complaint in this action; or (2) let the Stipulation and Order stand and collect the full Settlement Amount plus one hundred percent (100%) of the value of the net worth of SEEDCO previously undisclosed or concealed or dissipated. To the extent that the United States discovers the occurrence of an event(s) encompassed by subparts (a) through (b) of this Paragraph, SEEDCO agrees not to contest any collection action undertaken by the United States pursuant to this provision, and agrees not to plead, argue or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel or similar theories, to any civil or administrative claims, except to the extent these defenses were available on the date that the Federal Complaint was filed.

13. SEEDCO agrees that this Stipulation is not punitive in purpose or effect.

14. SEEDCO fully and finally releases the Relator, the United States, and its agencies, departments, employees, servants, and agents from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) which SEEDCO asserted, could have asserted, or may assert in the future against the Relator, the United States, its agencies, departments, employees, servants, and agents related to the Covered Conduct, and the Relator's and the United States' investigation and prosecution thereof, and this Stipulation.

15. Nothing in this Consent Decree is intended to or shall release, waive or diminish any claims SEEDCO may have under any insurance policies for any defense costs or for payment of the Settlement Amount or otherwise.

16. Relator and his heirs, successors, attorneys, agents, and assigns shall not object to this Stipulation but agree and confirm that this Stipulation is fair, adequate, and reasonable under all of the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). Subject to any claims Relator may have for his share of the Settlement Amount pursuant to the Stipulation and Order of Settlement and Release between the Relator and the United States, and reserving his right to argue in support of receiving a share of any recovery arising from claims of the United States against the individual defendants named in the Federal Complaint, although the United States does not concede that he has the right to such a share, Relator, for himself, individually, and for his heirs, successors, attorneys, agents, and assigns fully and finally releases, waives, and forever discharges the United States and its officers, agents, and employees, and forever discharges the United States and its officers, agents, and employees, and from any claims arising from the filing of the Civil Action and from any claims under 31 U.S.C. § 3730.

17. This Stipulation is intended to be for the benefit of the parties only. The parties do not release any claims against any other person or entity, except as provided in this Stipulation. Until the Settlement Amount is fully satisfied, SEEDCO shall maintain custody of, or make arrangements to maintain, all documents and records of SEEDCO related to the Covered Conduct.

18. If, within 91 days of the effective date of this Stipulation or within 91 days of any payment under this Stipulation, SEEDCO commences, or a third party commences, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization or relief of debtors: (i) seeking to have any order for relief of SEEDCO's debts; (ii) seeking to adjudicate SEEDCO as bankrupt or insolvent; or (iii) seeking appointment of a receiver, trustee, custodian or other similar official for SEEDCO or for all or any substantial part of its assets, then:

- a. SEEDCO's obligations under this Stipulation shall not be avoided pursuant to 11 U.S.C. § 547, and SEEDCO shall not argue or otherwise take the position in any such case, proceeding or other action that: (i) SEEDCO's obligations under this Stipulation may be avoided under 11 U.S.C. § 547; (ii) SEEDCO was insolvent at the time this Stipulation was entered into, or became insolvent as a result of the payments made to the United States hereunder; or (iii) the mutual promises, covenants and obligations set forth in this Stipulation do not constitute a contemporaneous exchange for new value given to SEEDCO.

- b. In the event that SEEDCO's obligations hereunder are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the United States, at its sole option, may rescind its agreement to this Stipulation, and bring any civil and/or administrative claim, action or proceeding against SEEDCO for the claims that would otherwise be covered by the releases provided in paragraph 7, above. SEEDCO: (i) shall not contend that any such claims, actions or proceedings brought by the United States are subject to an automatic stay pursuant to 11 U.S.C. § 362(a) as a result of the action, case or proceeding described in the first clause of this paragraph; (ii) SEEDCO shall not plead, argue or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel or similar theories, to any such civil or administrative claims, actions or proceedings which are brought by the United States within thirty (30) calendar days of written notification to SEEDCO that the releases herein have been rescinded pursuant to this paragraph, except to the extent such defenses were available on the date the complaint was filed in this action; and (iii) SEEDCO shall not contest the validity of a claim filed by the United States against SEEDCO in the Settlement Amount and the United States may pursue its claims in the case, action or proceeding referenced in the

first clause of this paragraph, as well as any other case, action, or proceeding.

- c. SEEDCO's agreements in this paragraph are provided in exchange for valuable consideration provided in this Stipulation.

19. Except as expressly provided to the contrary in this Stipulation, the United States, SEEDCO, and the Relator shall each bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Stipulation.

20. This Stipulation is governed by the laws of New York State without regard to choice of law or conflict of law principles. The parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the parties under this Stipulation as it relates to this action will be the United States District Court for the Southern District of New York. The parties waive any objection that any of them may now have or hereafter may have to this venue, whether concerning this Stipulation or for any related suit, action or proceeding, and irrevocably consent to the jurisdiction of this Court and agree to accept and acknowledge service in any such suit, action or proceeding.

21. For purposes of construction, this Stipulation shall be deemed to have been drafted by all parties to this Stipulation and shall not, therefore, be construed against any party for that reason in any subsequent dispute.

22. Any failure by the United States to insist upon the strict performance of any of the provisions of this Stipulation shall not be deemed a waiver of any of the provisions

hereof, and the United States, notwithstanding that failure, shall have the right thereafter to insist upon strict performance of any and all of the provisions of this Stipulation.

23. If any part of this Stipulation shall for any reason be found or held invalid or unenforceable by any court of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of this Stipulation, which shall survive and be construed as if such invalid unenforceable part had not been contained herein.

24. This Stipulation constitutes the complete agreement between the parties. This Stipulation may not be amended, changed, modified or waived except in writing signed by all parties or their authorized representatives.

25. The individual signing the Stipulation on behalf of SEEDCO represents and warrants that he or she is authorized by SEEDCO to execute this Stipulation. The undersigned signatory for the United States represents that he or she is signing this Stipulation in his or her official capacity and that he or she is authorized to execute this Stipulation.

26. This Stipulation may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Stipulation.

27. This Stipulation is binding on SEEDCO's successors and heirs.

28. Subject to the exceptions herein, in consideration of the obligations of SEEDCO in this Stipulation and Order, conditioned upon its timely full payment of the Settlement Amount, this action shall be dismissed with prejudice as to all claims the United States and the Relator have asserted based on the Covered Conduct, and to the extent of, and as

governed by, this Stipulation and Order. This is provided, however, that the Court shall retain jurisdiction over this Stipulation and Order and each party to the extent the obligations herein remain unsatisfied by that party.

29. Any notices pursuant to this Stipulation shall be in writing and shall, unless expressly provided otherwise herein, be given by hand delivery, express courier, or facsimile transmission followed by postage prepaid mail, and shall be addressed as follows:

IF TO THE UNITED STATES:

Sarah J. North
Assistant United States Attorney
United States Attorney's Office
Southern District of New York
86 Chambers Street, 3rd Floor
New York, New York 10007

IF TO DEFENDANT SEEDCO:

Claude Millman, Esq.
Kostelanetz & Fink, LLP
Seven World Trade Center
250 Greenwich Street, 34th Floor
New York, New York 10007

and

General Counsel
SEEDCO
915 Broadway, 17th Floor
New York, NY 10010
Attention: Important Legal Mail Re Consent Decree

and

Chief Financial Officer
SEEDCO
915 Broadway, 17th Floor
New York, NY 10010
Attention: Important Legal Mail Re Consent Decree

IF TO THE RELATOR:

Robert Sadowski, Esq.
Diamond McCarthy LLP
620 8th Avenue, 39th Floor
New York, New York 10018

30. The effective date of this Stipulation is the date upon which this Stipulation is entered by the Court (the "Effective Date").

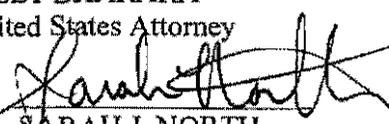
31. This Stipulation constitutes the complete agreement between the Parties. This Stipulation may not be amended except by written consent of the Parties.

32. The Parties represent that this Stipulation and Order is freely and voluntarily entered into without any degree of duress or compulsion whatsoever and upon due deliberation with the advice of counsel.

For the United States:

Dated: New York, New York
November 28, 2012

PREET BHARARA
United States Attorney

By: 
SARAH J. NORTH
Assistant United States Attorney
86 Chambers Street, 3rd Floor
New York, New York 10007
Telephone: (212) 637-2639
Facsimile: (212) 637-2717
E-mail: Sarah.North@usdoj.gov

For SEEDCO:

Dated: New York, New York
November __, 2012

KOSTELANETZ & FINK LLP
Attorneys for Defendant SEEDCO

By: _____
CLAUDE MILLMAN, Esq.
Seven World Trade Center
250 Greenwich Street, 34th Floor
New York, New York 10007
Telephone: (212) 840-7031
Facsimile: (212) 808-8108
E-mail: cmillman@kflaw.com

STRUCTURED EMPLOYMENT
ECONOMIC DEVELOPMENT
CORPORATION
Defendant

By: _____
Title: _____

For Relator William Harper:

Dated: New York, New York
November __, 2012

DIAMOND MCCARTHY LLP

Attorneys for Relator

By: _____

ROBERT SADOWSKI, Esq.

620 8th Avenue, 39th Floor

New York, New York 10018

Telephone: (212) 430-5400

Facsimile: (212) 430-5499

E-mail: Rsadowski@DiamondMcCarthy.com

WILLIAM HARPER, *Relator*

Dated: New York, New York
November __, 2012

SO ORDERED:

HON. ALVIN K. HELLERSTEIN
UNITED STATES DISTRICT JUDGE

Chief Financial Officer
SEEDCO
915 Broadway, 17th Floor
New York, NY 10010
Attention: Important Legal Mail Re Consent Decree

IF TO THE RELATOR:

Robert Sadowski, Esq.
Diamond McCarthy LLP
620 8th Avenue, 39th Floor
New York, New York 10018

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For the United States:

Dated: New York, New York
November __, 2012

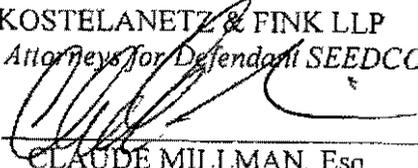
PREET BHARARA
United States Attorney

By: _____
SARAH J. NORTH
Assistant United States Attorney
86 Chambers Street, 3rd Floor
New York, New York 10007
Telephone: (212) 637-2639
Facsimile: (212) 637-2717
E-mail: Sarah.North@usdoj.gov

For SEEDCO:

Dated: New York, New York
November 27, 2012

KOSTELANETZ & FINK LLP
Attorneys for Defendant SEEDCO

By: 

CLAUDE MILLMAN, Esq.
Seven World Trade Center
250 Greenwich Street, 34th Floor
New York, New York 10007
Telephone: (212) 840-7031
Facsimile: (212) 808-8108
E-mail: cmillman@kflaw.com

STRUCTURED EMPLOYMENT
ECONOMIC DEVELOPMENT
CORPORATION
Defendant

By:  11/27/2012
Title: President + CEO

For Relator William Harper:

Dated: New York, New York
November __, 2012

DIAMOND MCCARTHY LLP
Attorneys for Relator

By: _____
ROBERT SADOWSKI, Esq.
620 8th Avenue, 39th Floor
New York, New York 10018
Telephone: (212) 430-5400
Facsimile: (212) 430-5499
E-mail: Rsadowski@DiamondMcCarthy.com

WILLIAM HARPER, *Relator*

Dated: New York, New York
~~November~~, 2012

Dec. 17, 2012

SO ORDERED:



HON. ALVIN K. HELLERSTEIN
UNITED STATES DISTRICT JUDGE

THIS DOCUMENT WAS ENTERED
ON THE DOCKET ON _____

J

EXHIBIT 1

SEEDCO Compliance Plan

I. Preamble

1. Structured Employment Economic Development Corporation (“SEEDCO”) agrees, as a term of its attached Consent Decree and Order of Settlement and Dismissal (“Settlement Agreement”) with the United States to which this Compliance Plan is incorporated by reference, to implement a compliance program (“Compliance Program”) to ensure compliance with the terms and conditions applicable to any federal grants provided by the United States Department of Labor (“US DOL”) (the “Covered Grants”), including funds disbursed pursuant to the Workforce Investment Act of 1998, 29 U.S.C. § 2801 *et seq.* as now or hereafter amended, whether the funding from the Covered Grants is received directly or indirectly by SEEDCO; and to demonstrate SEEDCO’s commitment to the prevention of fraud, false statements, and misuse of funds related to Covered Grants by SEEDCO, its officers, agents, and employees. The Compliance Program shall be based upon an assessment of the risk of such unlawful activities, have adequate financial and human resources, and be maintained so as to ensure that SEEDCO and each of its officers, agents, and employees maintain the integrity required of a recipient of Covered Grants.

2. Covered Grants herein mean any cooperative agreement, grant, contract, sub-contract or other instrument whereby SEEDCO receives US DOL funds.

II. Requirements

3. The period of future compliance obligations assumed by SEEDCO under the Compliance Plan will commence on the date the Court executes the Consent Decree and Order of Settlement and Dismissal (the “Effective Date”) to which this Compliance Plan is attached and incorporated and will be complete upon the fifth (5th) anniversary of the Effective Date.

4. The scope of the Compliance Plan shall be limited to any US DOL-funded activities taking place during the term of this Compliance Plan and US DOL funds awarded or disbursed during the compliance period.

A. Compliance

5. SEEDCO agrees to implement the following measures within thirty (30) days of the Effective Date, unless otherwise specified below:

i. Compliance Program

6. The Compliance Program shall identify all SEEDCO employees who are working on Covered Grants. Each of those roles and responsibilities shall be described so that their relationship to SEEDCO’s responsibilities under Covered Grants is clear. The lines of responsibility shall be clearly established from each individual position up to and including SEEDCO’s responsible signatory officials. All individuals in such positions will be provided

with (or have electronic access to) written policies and/or procedures applicable to their positions for:

- (a) a code of conduct holding SEEDCO personnel to high ethical standards of professional conduct and integrity, including addressing conflicts of interest, in substantially the form as attached hereto as Exhibit A;
- (b) a Whistleblower Policy, in substantially the form as attached hereto as Exhibit B;
- (c) accurate recording and reporting of data related to any required indicators or measures under the Covered Grants, including the indicator terms “entry into unsubsidized employment” or the “adult entered employment rate;”
- (d) accurate recording and reporting of all data to any governmental entity, including the United States;
- (e) accurate time and effort reporting;
- (f) accurate reconciliation of accounting records; and
- (g) document management and retention.

Individuals working on Covered Grants are responsible for the effective implementation of the aforementioned policies and procedures.

ii. Compliance Officer

7. After appropriate screening, SEEDCO shall appoint a senior level administrator to serve as the Compliance Officer for the Compliance Program and identify that individual to the United States. The Compliance Officer shall be responsible for Compliance Program operations including, where appropriate:

- (a) Ensuring compliance with all applicable federal laws, regulations, and conditions regarding the use and expenditure of funds under Covered Grants;
- (b) Developing programs and training to ensure compliance with the Code of Conduct;
- (c) Implementing and monitoring the Whistleblower Policy, including by serving as the Compliance Officer under that policy;
- (d) Implementing and overseeing the Confidential Disclosure Compliance Program, described below in paragraph 15;

- (e) Responding to the United States' requests for compliance-related information, pursuant to this Compliance Plan and the attached Consent Decree; and
- (f) Responding to alleged violations of rules, regulations, policies, and procedures, including the Code of Conduct and Whistleblower Policy, by evaluating the alleged violations and recommending whether an investigation should be initiated, in accordance with the system for uniform handling of such violations the Compliance Office creates pursuant to this Compliance Plan.

ii. Compliance Committee

8. The Compliance Officer shall chair a Compliance Committee that shall be responsible for ensuring implementation of the Compliance Program throughout SEEDCO. In addition to the Compliance Officer, the members of the Compliance Committee shall include appropriately screened officers.

iii. Written Policies

9. Within thirty (30) days of the Effective Date, SEEDCO shall implement written policies regarding its commitment to ensure compliance with all laws, regulations, and conditions related to the receipt of Covered Grants. These policies shall be adopted by SEEDCO and distributed to all SEEDCO officers and relevant employees. Copies of SEEDCO's written policies will be provided to the United States within thirty (30) days of implementation. Any policies modified during the term of the Compliance Plan shall be provided to the United States within thirty (30) days of implementation. Such policies shall be updated to reflect any changes in SEEDCO's policies or practices. SEEDCO's compliance policies shall include disciplinary procedures for dealing with employees who fail to comply with the policies.

iv. Posting and Displaying Fraud Hotline Posters

10. During the period of the Compliance Plan, SEEDCO shall:
- (a) Prominently display the fraud hotline posters from the US DOL Office of the Inspector General in common work areas in which SEEDCO personnel are performing work under any Covered Grants;
 - (2) Post on its website an electronic version of these fraud hotline posters in a manner easily accessible to SEEDCO's relevant employees; and
 - (3) Request that any subcontractor working on Covered Grants post these fraud hotline posters in its common areas.

B. Independent Audit and Evaluation Requirements

11. Each year SEEDCO will direct the qualified external audit firm performing the annual audit requirements contained in OMB Circular A-133 for SEEDCO to include in that audit an audit of SEEDCO's compliance with all applicable federal laws, regulations, and conditions regarding the use and expenditure of funds under Covered Grants. SEEDCO shall direct the audit firm to include each component of SEEDCO that receives or has oversight responsibility with respect to Covered Grants as a major program under OMB Circular A-133 and SEEDCO shall direct audit firm to conduct the audit in accordance with Government Auditing Standards. SEEDCO shall direct the audit firm to devote special attention to risk assessment and internal controls designed to ensure compliance with US DOL requirements, including the certifications made on applications, progress reports, financial reports, and other reports related to Covered Grants.

In addition to the audit requirements contained in OMB Circular A-133 as described above, SEEDCO shall engage an independent consultant, which may or may not be an external audit firm, to conduct a comprehensive evaluation of SEEDCO's compliance with this Compliance Plan and assess whether:

- (a) SEEDCO has established compliance standards and procedures to prevent and detect violations of law;
- (b) SEEDCO's leadership is knowledgeable about such standards and procedures and a high-level person has been assigned or retained to have responsibility to ensure the implementation and effectiveness of the standards and procedures;
- (c) SEEDCO has made reasonable efforts to exclude from substantial authority any individual SEEDCO knew or should have known through exercise of due diligence has a history of engaging in violations of law or other conduct inconsistent with an effective program to prevent and detect violations of law;
- (d) SEEDCO has made reasonable steps to communicate its compliance standards and procedures to relevant employees through effective training programs and other means of disseminating information appropriate to such individuals' respective roles and responsibilities;
- (e) SEEDCO took reasonable steps to ensure that its program to prevent and detect violations of law is followed, to evaluate the effectiveness of the compliance standards and procedures, and to provide a system whereby SEEDCO's employees and agents may report or seek guidance regarding potential or actual violations of law without fear of retaliation, including mechanisms that allow for anonymous reporting;

- (f) SEEDCO's program to prevent and detect violations of law was enforced consistently through appropriate incentives and as necessary disciplinary measures for employees engaging in violations of law or failing to take reasonable steps to prevent or detect violations of law; and
- (g) SEEDCO has taken reasonable steps, when a violation of law is detected, to respond appropriately and to prevent future violations of law, including making any necessary changes to the program for preventing and detecting violations of law.

12. SEEDCO shall provide any of the audits or reports required pursuant to paragraph 11 to the United States upon ten (10) days notice. SEEDCO waives the right to claim that any final reports or work papers resulting from the independent annual audits as described above constitute attorney work product or any other recognized privilege.

13. Any and all reviews conducted at SEEDCO, which reveal situations constituting or indicating noncompliance with US DOL requirements, are to be timely disclosed to the firms conducting the annual audit and evaluation described in Paragraph 11 and the Compliance Officer.

D. Training

14. SEEDCO shall institute and maintain a comprehensive training program designed to ensure that each officer and employee working on any Covered Grant is aware of all applicable laws, regulations, and standards of conduct that such individual is expected to follow with regard to Covered Grants, and the consequences both to the individual and SEEDCO that will ensue from any violation of such requirements. Each officer and relevant employee shall receive at least two (2) hours of initial training that shall include a discussion of the contents of the Compliance Plan as well as the relevant grant requirements, and shall receive additional compliance training of at least two (2) hours on an annual basis. A schedule and topic outline of the training shall be included in the annual report. A certificate shall be placed in the personnel file of each such officer and employee upon completing the training, stating the date, topic, and hours of training received.

E. Confidential Disclosure Compliance Program

15. To the extent permitted by the relevant State and local laws, including the laws of the State of New York and SEEDCO's relevant government contracts, SEEDCO shall establish a confidential disclosure mechanism enabling SEEDCO and relevant employees to disclose anonymously to the Compliance Officer any practices, procedures, or acts deemed by the employee to be unethical, or illegal, including by providing a hotline telephone number and website for reporting of complaints, including anonymous complaints. SEEDCO shall make the confidential disclosure mechanism known to each officer and employee who is working on any Covered Grants as part of the training described above. SEEDCO shall require the internal review of all such credible disclosures and ensure that proper follow-up is conducted. SEEDCO shall retain a summary of communications received under the confidential disclosure program,

and the results of the internal review and follow-up of such disclosures. In addition, SEEDCO shall make any SEEDCO record of a complaint or other allegation involving unethical or illegal activity available to the United States upon ten days' notice, after making redactions appropriate to preserve the requested-confidentiality described above.

III. Inspection, Audit, and Review Rights

16. In addition to any other right that the United States has pursuant to applicable award conditions or other authority, the United States may examine and copy SEEDCO's records for the purpose of verifying and evaluating: (a) SEEDCO's compliance with the terms of the Compliance Plan; and (b) SEEDCO's compliance with any US DOL requirements. SEEDCO shall make the records available at any reasonable time for inspection, audit, and/or reproduction. Furthermore, for purposes of this provision, upon ten (10) days' notice, the United States may interview any SEEDCO employee at the employee's place of business during normal business hours or at such other place and time as may be mutually agreed upon.

17. In the event that the United States believes SEEDCO has breached any of its obligations under the Compliance Plan, it shall notify the Compliance Officer of the alleged breach electronically or by other appropriate means, specifying the nature and extent of the alleged breach. SEEDCO will have thirty (30) days from receipt of the notice to: (a) cure said breach; or (b) otherwise satisfy the United States that (1) it is in full compliance with the Compliance Plan or (2) the breach cannot be reasonably cured within thirty (30) days, but SEEDCO has taken effective action to cure the breach and is pursuing such action with diligence.

18. If, at the end of the time period described in paragraph 17, the United States determines that SEEDCO continues to be in breach of any of its obligations under the Compliance Plan, the United States shall inform the Compliance Officer of the conclusion that SEEDCO is in default. The United States may also take one or both of the following actions: (1) refer the matter to their respective agencies to initiate proceedings to undertake appropriate administrative action, including but not limited to the suspension or termination of any or all US DOL grants or awards, whether direct or indirect, and/or suspension or debarment of SEEDCO; and/or (2) initiate civil enforcement, pursuant to the terms of the Consent Decree.

19. Should any action to enforce or interpret the Compliance Plan or to resolve any dispute hereunder be required, the Parties acknowledge the jurisdiction of the federal courts. The parties agree that, absent a breach of the Compliance Plan and/or the Consent Decree to which it is attached and incorporated by reference, the execution of the Consent Decree shall be final as to all matters alleged in the Consent Decree.

IV. Costs

20. SEEDCO shall bear its own costs, expenses, and fees in relation to implementation of the Compliance Plan.

21. All costs, whether direct or indirect, incurred by or on behalf of SEEDCO in connection with the following are unallowable costs under the cost principles applicable to federal government awards (hereafter, “unallowable costs”): (1) the matters covered by the Compliance Plan; (2) the negotiation of the Compliance Plan and the Consent Decree and Order of Settlement and Dismissal as to SEEDCO (“Consent Decree”) (including attorney’s fees); and (3) any payments made pursuant to the Consent Decree. For the sake of clarity, the following are “unallowable costs” within the meaning of this Compliance Plan and the Consent Decree: the cost of making the postings required under paragraph 10, above, the fees of the “independent consultant” performing the “comprehensive evaluation of SEEDCO’s compliance with this Compliance Plan” referenced in the second paragraph of paragraph 11, above, and the initial training required under Paragraph 14, above, for any current SEEDCO employees. The costs of the following are not “unallowable costs” within the meaning of this Compliance Plan and the Consent Decree: SEEDCO’s annual OMB Circular A-133 audits, the “senior level administrator” at SEEDCO designated “to serve as the Compliance Officer” (including any salary and benefits and any costs for audit, review, or training such as travel costs), SEEDCO’s Whistle Blower Hotline and related services, SEEDCO’s training, verification and tracking activities, including the development and/or update of any training curriculum, printing and distribution of training material, travel, or work on any online/web-based training medium, including the initial training of future employees and any subsequent annual training pursuant to Paragraph 14 of this Plan.

22. These unallowable costs shall be separately estimated and accounted for by SEEDCO and SEEDCO shall not charge such unallowable costs directly or indirectly to any federal grant or award.

V. 21. Modification

23. Any modification to the Compliance Plan shall not be effective until a written amendment is signed by representatives duly authorized to execute such amendment.

VI. Integration Clause

24. This Compliance Plan and the Consent Decree, to which it is attached and incorporated by reference, embody the entire understanding of the Parties with respect to the subject matter contained herein. There are no restrictions, promises, representations, warranties, covenants, or undertakings other than those expressly set forth or referred to in the Compliance Plan and the Consent Decree. The Compliance Plan and the attached Consent Decree to which it is incorporated by reference, supersedes any and all prior settlement agreements and understandings between the Parties with respect to this subject matter.

EXHIBIT A

CODE OF CONDUCT

It is the policy of Seedco to foster a positive working environment built upon a foundation of mutual trust, respect, open communication, and ethical behavior. Therefore, Seedco expects its employees, interns, and volunteers (referred to in this Code of Ethics as "employees") to act in accordance with the highest standards of personal and professional integrity in all aspects of their work-related activities. These standards include honesty, integrity, civility, mutual respect, and acceptance and support of a diverse work environment.

Employee responsibilities include but are not limited to those listed below:

Protection of Seedco's Information and Resources

All employees shall take appropriate steps to protect and preserve Seedco assets, property, and financial resources. At no time should an employee use Seedco assets or financial resources for personal gain or profit. All employees shall comply with established internal policies and procedures to protect and appropriately use assets and to maintain financial records.

All employees shall protect the private and confidential information of our customers, clients, employees, and others associated with the business of Seedco throughout and after their employment with Seedco. Employees shall not disclose or provide access to non-public information, obtained or developed in the course of conducting Seedco business to anyone other than those who have a legitimate business need to know such information—except when authorized and/or unless legally obligated to do so. This policy applies to all forms of confidential material and information, whether in electronic form or hard copy form.

All employees shall comply with the federal, state, and local laws, regulations, and guidance for the programs in which they work, familiarize themselves with the relevant law, as applicable to their job function, and report any discovery of non-compliance with any federal, state, or local law, regulation, or guideline to Seedco's Compliance Officer.

Employees shall not participate in the submission to any governmental entity a record or report that such person knows is false where the record or report relates to a contract or program that receives funds from the United States, and any employee who learns of a violation of that rule shall notify Seedco's Compliance Office, in writing, of such a violation within 14 days of its discovery.

All employees shall maintain and comply with security procedures, and be alert to situations that may lead to loss, theft, or misuse of assets.

All employees shall refrain from engaging in or knowingly supporting any activity that would not be consistent with the basic aims and values of Seedco.

Employees should not authorize outside use of Seedco intellectual property (copyrighted or trademarked content) if such use gives the appearance of Seedco endorsing another organization's products or company.

Employees who are in doubt about the use of Seedco's name and logo should contact Seedco's Communications department for further guidance.

Any and all rights in data, information, papers, articles, notes, books, or other documents and property produced by an employee within the scope of employment duties and relating in any way to the actual or anticipated activities of Seedco shall belong to Seedco.

Avoidance of Conflicts of Interest

Employees are required to read and adhere to Seedco's Conflict of Interest Policy and submit to Human Resources a completed disclosure form and certification that the Conflict of Interest Policy has been read and appropriate disclosures have been made.

The Conflict of Interest Policy states the employee's duty of loyalty, including his or her duty to refrain from conflicts of interest; provides examples of conflicts; and describes the process for disclosing potential conflicts of interest.

The Conflict of Interest Policy includes the following important points:

- Each employee has the responsibility at all times to be loyal to Seedco and to promote Seedco's best interests. To this end, each employee should avoid conflicts of interest or the appearance of conflicts of interest.
- A conflict of interest occurs when employees permit the possibility of gain to themselves or their immediate families to influence their judgment in acting on behalf of Seedco. An action may constitute a conflict of interest without being in violation of any laws, rules, or regulations.
- Employees should not engage in activity with or provide gifts or favors to any person or organization where they might tend, in any way, to influence objective judgment concerning Seedco policies or procedures. Similarly, employees should not accept gratuities or gifts valued in excess of a minimal value (about \$25) from other companies or individuals who do business with Seedco or seek to do business with Seedco.
- This duty of loyalty means that employees must raise concerns when they become aware that a Seedco consultant or contractor has a conflict of interest or apparent conflict of interest that would violate this policy if that consultant or contractor were an employee. Such conflicts may arise when the consultant or contractor markets services to clients outside the scope of services agreed to by Seedco or encourages Seedco to serve a client in which the consultant/contractor or the consultant/contractor's family member has a financial interest.

Separation of Personal Opinions from the Organization's Positions

When formally or informally expressing personal opinions to outside groups or individuals, either orally or in writing, employees should avoid the implication that they represent an official Seedco position or are endorsed by Seedco, unless the employee has been authorized to do so. Prior to any public activity, employees should seek guidance from their manager or Human Resources to ensure that a conflict of interest does not exist.

EXHIBIT B

WHISTLEBLOWER PROTECTION POLICY REVISED MARCH 2012

General

This Whistleblower Protection Policy (“Policy”) is intended to encourage employees to report serious concerns and suspected violations, including actions that (1) are unlawful; (2) may lead to incorrect financial reporting; (3) are inconsistent with organizational policy; or (4) constitute fraud or impropriety or appear to constitute fraud or other falsification of records. This Policy shall enable employees to raise serious concerns within the organization prior to seeking resolution outside the organization. An addendum listing reportable matters is attached.

Policy

All employees must comply with our Code of Ethics as well as other organizational policies and report serious concerns and/or suspected violations of such policies in accordance with this Policy. The General Counsel serves as Chief Ethics Officer and the Chief Operational Excellence Officer serves as Compliance Officer.

Anyone making a report of serious concerns or suspected violations must be acting in good faith and have reasonable grounds for believing that the information disclosed indicates a violation. No employee who, in good faith, reports a serious concern or suspected violation shall suffer harassment, retaliation or adverse employment consequence. An employee who retaliates against someone who has reported a violation in good faith shall be subject to discipline, up to and including termination of employment.

Any allegation that proves to have been made maliciously or in bad faith will be viewed as a serious offense which may result in disciplinary action up to and including dismissal.

Procedure

The organization encourages employees to share their questions, concerns, suggestions or complaints with a supervisor who is likely in the best position to address an area of concern. If an employee is not comfortable speaking with a supervisor, or is not satisfied with the supervisor’s response, the employee is encouraged to invoke this Whistleblower Policy and bring matters to the Chief Operational Excellence Officer in her capacity as Compliance Officer. Complaints can be made orally or in writing to the Compliance Officer. Employees also have the option of using Seedco’s confidential incident reporting system, available online at www.mysafeworkplace.com or by calling toll free at 800-461-9330. However, any complaint regarding or involving the Compliance Officer should be reported to the General Counsel.

The Compliance Officer will be responsible for conducting investigations in consultation with the General Counsel and they shall work together with the President to resolve all reported matters. The Compliance Officer shall inform the President and the Chair of the Audit and Finance Committee promptly of the matters reported, except that informing the President may be excused where the matter involves her or there is other reason not to do so in the General Counsel’s determination. The Compliance Officer and the General Counsel will report to the Audit and Finance Committee regarding the resolution of each complaint on a quarterly basis, unless earlier reporting is requested by the Audit Committee or warranted by the materiality or circumstances of the matter.

Whistleblower Protection Policy Addendum

This is an illustrative list of some, but not all, of the kinds of conduct that violate organizational policy which can and should be reported:

- Suspected fraud, theft, embezzling, self-dealing, private inurement (*i.e.*, organizational earnings benefiting a director, officer, or senior management) and private benefit (*i.e.*, organizational assets being used by employees for personal gain or benefit)
- Supplying false or misleading information in the organization's financial or other public documents, including its Form 990
- Providing false information to, or withholding material information from, the Board of Directors or auditors
- Destroying, altering, mutilating, concealing, covering up, falsifying, or making a false entry in any records that may be connected to an official proceeding or submission to a government entity
- Altering, destroying, or concealing a document, or attempting to do so, with the intent to impair the document's availability for use in an official proceeding or otherwise obstructing, influencing, or impeding any official proceeding
- Paying or authorizing payment for services or goods not actually rendered or delivered
- Unsafe working conditions or practices
- Sexual harassment, including remarks or actions of a sexual nature that are unwelcome and likely to be viewed as personally offensive, including sexual flirtations, unwelcome physical or verbal advances, sexual propositions, verbal abuse of a sexual nature, display of sexually suggestive objects, cartoons, or pictures, and physical contact of a sexual or particularly personal nature
- Other harassment, including epithets, slurs, negative stereotyping, threatening, intimidating, or hostile acts that relate to race, color, religion, gender, national origin, age, genetic information including family medical history, disability, or other protected status
- Circulating or posting written or graphic material in the course of work for the organization that denigrates or shows hostility or aversion toward an individual or group because of race, color, religion, gender, nationality, age, family medical history, disability, or other protected status
- Discriminating against an employee, potential employee, volunteer, or client due to a person's race, color, religion, sex, sexual orientation, national origin, age, veteran status, genetic information including family medical history, disability, or other protected status
- Violating this Policy, the Code of Ethics, including the Conflict of Interest Policy, or any other policy of the Corporation
- Facilitating or concealing any of the above actions